रजिस्ट्री सं० डी एल (एन) 04/0007/2003—05

REGD. No. DL (N) 04/0007/2003—05

भारत का राजपत्र
The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 50] नई दिल्ली, दिसम्बर 7—दिसम्बर 13, 2003, शनिवार/अग्रहायण 16—अग्रहायण 22, 1925
No. 50] NEW DELHI, DECEMBER 7—DECEMBER 13, 2003, SATURDAY/AGRAHAYANA 16—AGRAHAYANA 22, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 28 नवम्बर, 2003

का०आ० 3354.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 222 पीसीआर 2003 दिनांक 31-10-2003 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से श्री पी. के. आर. नाम्बियार, तत्कालीन मुख्य प्रबंधक (2) श्री के. आर. रामाकृष्णन,तत्कालीन वरिष्ठ प्रबंधक, (3) श्री टी. बेबी, तत्कालीन प्रबंधक, केनरा बैंक, ओवरसीज़ शाखा, इरनाकुलम (4) के.आर. सुदर्शन, प्रबंध निदेशक, (5) श्रीमती रेजीता सुदर्शन, निदेशक, (6) श्री टी. सुधाकर, निदेशक, मैसर्स कोमेट कॉमोडिटी एक्सपोर्टस लिमिटेड एलुवा, केरल और (7) मैसर्स कोमेट कॉमोडिटी एक्सपोर्टस लिमिटेड, इरुमथाला, एलुवा, केरल और किन्ही अन्य लोक-सेवकों अथवा व्यक्तियों के विरुद्ध भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी सपठित धारा 420, 467, 468, 471 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13(1)(डी) के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/98/2003-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

CABINET SECRETARIAT

New Delhi, the 28th November, 2003

S.O. 3354.—In exercise of the powers conferred by Sub-section(1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Karnataka, vide Notificaton No. HD 222 PCR 2003 dated 31-10-2003, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for

investigation of offences against Shri P. K. R. Nambiar, the then Chief Manager, (2) Shri, K. R. Ramakrishnan, the then Senior Manager, (3) Shri T. Baby, the then Manager of Canara Bank, Overseas branch, Ernakulam (4) K. R. Sudarshan, Managing Director (5) Mrs. Rejitha Sudarshan, Director (6) Shri T. Sudhakar, Director of Ms. Comet Commodity Exports Limited, Aluva, Kerala and (7) Mrs. Comet Commodity Exports Limited, Erumathala Aluva, Kerala and any other public servants or persons under section 120-B read with 420, 467, 468, 471 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and section 13(2) read with 13(1) (d) of Prevention of Corruption Act, 1988 (Act, No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts.

[No. 228/98/2003-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 3 दिसम्बर, 2003

का०आ० 3355.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उत्तरांचल राज्य सरकार के गृह विभाग की अधिसूचना सं. 603/गृह-1/विविध (441)/2003 दिनांक 11-11-2003 द्वारा प्राप्त उत्तरांचल राज्य सरकार की सहमति से वर्ष 2003 के दौरान देहरादून, उत्तरांचल में उत्तरांचल पुलिस की सिविल पुलिस/इंटेलिजेंस/पीएसी में उप-निरीक्षक की भर्ती संबंधी अभिलेखों और परिणामों में आपराधिक षडयंत्र, धोखाधड़ी, जालसाजी और लोकसेवक के रूप में शासकीय पद का दुरुपयोग करके अनुचित अनुग्रह दिखाने के संबंध में भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी, 420, 467, 471 और 477 तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13(1) (डी) के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए उन्हीं तथ्यों एवं श्री ओ.पी. तिवारी, अवर सचिव, गृह विभाग, उत्तरांचल सरकार, देहरादून द्वारा दायर शिकायत दिनांक 18-11-2003 में उल्लिखित तथ्यों से उद्भूत किसी अन्य अपराध अथवा अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण उत्तरांचल राज्य पर करती है।

[सं. 228/88/2003-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

New Delhi, the 3rd December, 2003

S.O. 3355.—In exercise of the powers conferred by sub-section(1) of Section 5 read with section 6 of the Delhi Establishment Act, 1946 (Act No. 25 of 1946), the Government with the consent of State Gvoernment of Uttaranchal Home Department vide Notificaton No. 603/Home-1/Misc(441)/2003 dated 11th November, 2003, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Uttaranchal for investigation of offences punishable under sectioin 120-B, 420, 467, 471 and 477 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and section 13(2) read with section 13(1) (d) of Prevention of Corruption Act, 1988 (Act, No. 49 of 1988) with regard to criminal conspiracy, cheating, falsification or records and results in recruitment of sub-inspectors in Civil Police/ Intelligence/PAC of Uttaranchal Police and showing of under favour by misuse of official position as public servant during the year 2003 at Dehradun, Uttaranchal and attempts, abetments and conspiracy in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts and as enumerated in the complaint dated 18-11-2003 lodged by Shri O.P Tiwari, Under Secretary Department of Home Affairs, Government of Uttaranchal, Dehradun.

[No. 228/88/2003-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 8 दिसम्बर, 2003

का०आ० 3356.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए धनबाद जिले के धनसार में दिनांक 3-10-2003 को स्व. प्रमोद सिंह, कोयला व्यापारी की हत्या से संबंधित मामले में झारखण्ड राज्य सरकार के गृह विभाग की अधिसूचना सं. 6/सीबीआई-516 / 2003/4908 दिनांक 11 अक्तूबर, 2003 द्वारा प्राप्त झारखण्ड राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना के सदस्यों और अधिकारिता का विस्तार संपूर्ण झारखण्ड राज्य पर, पुलिस स्टेशन धनसार (धनबाद) जिला धनबाद झारखण्ड में दर्ज हुए एफ. आई. आर सं. 638/03 दि. 03-10-2003 अंतर्गत धारा 307/34, 302 भारतीय दंड संहिता 1860 (1860 का अधिनियम सं. 45) एवं 27 आर्म एक्ट तथा उपर्युक्त अपराध से संबंधित अथवा संशक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्रों तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किया गया या किए गए किसी अन्य अपराध अथवा अपराधों का अन्वेषण करने के लिए करती है।

[सं. 228/90/2003-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

New Delhi, the 8th December, 2003

S.O. 3356.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Jharkhand issued vide Home Department

Notification No. 6/CBI/516/2003-4908 dated 11th October, 2003, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Jharkhand to investigate Criminal Case FIR No. 638/2003 dated 3rd October, 2003 under sections 307, 34 and 302 of the India, Penal Code, 1860 (Act No. 45 of 1860) and section 27 of Arms Act registered at Police Station/Dhanbad (Dhansar) regarding murder of Late Pramod Singh, Coal Merchant, Dhanbad (Dhansar) and attempts, abetments and conspiracy in relation to or in connection with the said offences and any other offence committed in course of the same transaction.

[No. 228/90/2003-DSPE]

SHUBHA THAKUR, Under Secy.

नई दिल्ली, 9 दिसम्बर, 2003

का० आ० 3357.—केन्द्रीय सरकार एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए छत्तीसगढ़ राज्य सरकार के गृह (पुलिस) विभाग की अधिसूचना सं. फा.-1-22-2002/1/6 दिनांक 8-12-2003 द्वारा प्राप्त छत्तीसगढ़ राज्य सरकार की सहमति से लोक सेवक के आपराधिक कदाचार के संबंध में भ्रष्टाचार निवारण ब्यूरो पुलिस स्टेशन, रायपुर में भारतीय दंड संहिता की धारा 34, 120-बी सपठित भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1) (डी)/13(2), 12 और 15 के अधीन दर्ज मामला अपराध सं. 9/2003 तथा उक्त अपराधों से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्रों तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध (धों) के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण छत्तीसगढ़ राज्य पर करती है।

[सं. 228/106/2003-डी.एस.पी.ई.]

शुभा ठाकुर, अवर सचिव

New Delhi, the 9th December, 2003

S.O. 3357.—In exercise of the powers conferred by sub-section(1) of Section 5 read with Section 6 of Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1947), the Central Government with the consent of State Government Chhattisgarh vide Government of Chhattisgarh Home (Police) Department Notification No. F-1-22-2002/16 dated 8-12-2003 hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Chhattisgarh for investigation of Anti-Corruption Bureau Police Station, Raipur Offence bearing case No. 9/2003 registered under Sections 34 and 120-B of Indian Penal Code read with Sections 13(1) (d)/13(2), 12 and 15 of the Prevention of Corruption Act, 1988, regarding criminal misconduct by public servant and attempts, abetments and conspiracies in relaton to or in connection with said offences and any other offence(s) committed in the course of the same transaction arising out of the same facts.

[No. 228/106/2003-DSPE]

SHUBHA THAKUR, Under Secy.

गृह मंत्रालय

(राजभाषा विभाग)

नई दिल्ली, 27 नवम्बर, 2003

का० आ० 3358.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में भारतीय चिकित्सा पद्धति एवं होम्योपैथी विभाग जिसके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[सं. 12022/2/2003-रा.भा. (का-II)]

ए. एस. गोदरे, निदेशक

MINISTRY OF HOME AFFAIRS

(Department of Official Language)

New Delhi, the 27th November, 2003

S.O. 3358.—In pursuance of Sub Rule(4) of Rule 10 of the Official Language (Use for official purposes of the Union) Rules, 1976, the Central Government hereby notify Department of Indian System of Medicine and Homeopathy whereof more than 80% staff have acquired the working knowledge of Hindi.

[No. 12022/2/2003-O.L. (Impl.-II)]

A. S. GODRAY, Director

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 20 नवम्बर, 2003

स्टाम्प

का०आ० 3359.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खण्ड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा पंजाब नेशनल बैंक, नई दिल्ली, को मात्र दो करोड़ पैंतीस लाख रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा दिनांक 4 सितम्बर, 2003 को आबंटित किए गए मात्र दो सौ पैंसठ करोड़ रुपए के समग्र मूल्य के प्रत्येक दस-दस लाख रुपये के प्रोमिसरी नोटों के स्वरूप में असुरक्षित अपरिवर्तनीय गौण विमोच्य बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 40/2003-स्टाम्प-फा.सं. 33/57/2003-बि.क.]

आर. जी. छाबड़ा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 20th November, 2003

STAMPS

S.O. 3359.—In exercise of powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Punjab Natinal Bank, New Delhi to pay consolidated stamp duty of rupees two crore thirty five lakh only chargeable on account of the stamp duty on unsecured non-convertible subordinated redeemable bonds in the nature of promissory notes of rupees ten takh each aggregating to rupees two hundred sixty five crore only, allotted on 4th September, 2003 by the said Bank.

[No. 40/2003-STAMP-F.No.33/57/2003-ST]

R. G. CHHABRA, Under Secy.

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3360.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2001-2002, 2002-2003, और 2003-2004 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ. के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ. के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स गुजरात पीपावेव पोर्ट लिमिटेड, बी-1, महाराजा प्लेस, यूनिवर्सिटी रोड, नवरंगपुरा, अहमदाबाद-380009 ने गुजरात मेरीटाईम बोर्ड के साथ निष्पन्न करार के अनुसार बी. ओ. ओ. टी. आधार पर पीपावेव, गुजरात पर पोर्ट के विकास, प्रचालन और रख-रखाव के अपनी परियोजना के लिए (फा. सं. 205/37/98-आयकर नि.-II) (खंड-I)

[अधिसूचना सं. 300/2003/फा.सं. 205/37/98-आयकर नि.-II खंड-I]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 21st November, 2003

S.O. 3360.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2001-2002, 2002-2003 and 2003-2004.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) Ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s. Gujarat Pipavav Port Limited, B-1, Maharaja Palace, University Road, Navrangpura, Ahamdabad-380 009 for their project of development, operation and maintenance of port at Pipavav, Gujarat on BOOT basis as per agreement with the Gujarat Maritime Board .(F. No. 205/37/98-ITA-II) (Vol. 1)

[Notification No. 300/2003/F. No. 205/37/98-ITA-IIVol. I]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3361.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2000-2001, 2001-2002, और 2002-2003 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स महाकाली फ्लाई ओवर लिमिटेड, जोग सेन्टर, 28/1, मुम्बई-पुणे रोड, वाकेवाडी, पुणे-411003 ने बी. ओ. टी. आधार पर वेस्टर्न एक्सप्रेस हाईवे, मुम्बई पर छः लेन के 1453 मीटर लम्बे फ्लाई ओवर जिसमें तीन जंक्शन, जैसे बहार, गोल्ड स्पॉट और अंधेरी-कुर्ला शामिल है, के निर्माण की अपनी परियोजना के लिए (फा. सं. 205/19/2000-आ. क. नि.-II)

[अधिसूचना सं. 303/2003/फा. सं.205/19/2000/आयकर नि. II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 21st November, 2003

S.O. 3361.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2000-2001, 2001-2002, and 2002-2003.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s. Mahakali Flyover Limited, Jog Centre, 28/1, Mumbai-Pune Road, Wakewadi, Pune-411003 for their project of construction of six lane, 1453 M long flyover covering three junctions viz. Bahar, Gold Spot and Andheri-Kurla on the Western Express Highway, Mumbai on BOT basis. (F. No. 205/19/2000-ITA-II).

[Notification No. 303/2003/F. No. 205/19/2000-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3362.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2004-2005, 2005-2006, और 2006-2007 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ. के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ. के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स चेन्नई कंटेनर टर्मिनल प्राइवेट लिमिटेड, मुम्बई ने चेन्नई पोर्ट ट्रस्ट के साथ निष्पन्न अपने करार के अनुसार चेन्नई कंटेनर टर्मिनल के विकास और प्रबंधन की उसकी परियोजना के लिए। (फा. सं. 205/51/2001-आयकर नि.-II) (खण्ड-I)।

[अधिसूचना सं. 304/2003/फा. सं. 205/51/2001-आयकर नि.-II (खण्ड-I)]

संगीता गुप्ता, निदेशक (आयकर नि. I)

New Delhi, the 21st November, 2003

S.O. 3362.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2004-2005, 2005-2006, and 2006-2007.

2. The approval is subject to the condition that —

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s. Chennai Container Terminal Private Limited, Mumbai for their project of development and management of Chennai Container Terminal as per their agreement with the Chennai Port Trust. (F. No. 205/51/2001-ITA-II)(Vol. I).

[Notification No. 304/2003/F. No. 205/51/2001-ITA-II—(Vol. I)]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3363.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2003-2004, 2004-2005, और 2005-2006 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है; और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

एमास एक्सप्रेसवे प्रा. लि., "एवरेस्ट हाउस", फ्लैट नं. 20सी, 46सी, चौरिंघी रोड, कोलकाता-700071 को निर्माण, संचालन एवं हस्तांतरण (बी.ओ.टी.) आधार पर पश्चिम बंगाल राज्य में 581 कि.मी. से 646 कि.मी. के बीच मौजूदा 2 लेन वाली परिवहन मार्ग का पुनर्वास एवं इसके सुदृढ़ीकरण की परियोजना के लिए जिसमें मौजूदा दुर्गापुर एक्सप्रेसवे (राष्ट्रीय राजमार्ग सं. 2 का दानकुनी-पालसिट खण्ड) पर इसे द्विमार्गीय परिवहन मार्ग में परिवर्तित करते हुए इसका विस्तार 4 लेनों में किया जाना शामिल है। (फा. सं. 205/37/2002-आयकर नि.-II)।

[अधिसूचना सं. 302/2003/फा. सं. 205/37/2002-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.II)

New Delhi, the 21st November, 2003

S.O. 3363.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2003-2004, 2004-2005 and 2005-2006.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10 (23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) Ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

Emas Expressway Pvt. Ltd., 'Everest House' Flat No. 20C, 46C, Chowringhee Road, Kolkata-700071 for their project of rehabilitation and strengthening of the existing 2 lanes from Km 581 to Km 646 and widening thereof to 4 lanes with dual carriageway on the existing Durgapur Expressway (Dankuni-Palsit Section of National Highway-2) in the State of West Bengal on Build-Operate-Transfer (BOT) basis. (F. No. 205/37/2002-ITA-II).

[Notification No. 302/2003/F. No. 205/37/2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 21 नवम्बर, 2003

का.आ. 3364.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004, और 2004-2005 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा,

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है, और

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है, अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स मैपेक्स इन्फ्रास्ट्रक्चर प्रा. लि., 87/1, प्रथम तल, तानुपुकुर रोड, धाकुरिया, कोलकाता को निर्माण, संचालन एवं हस्तांतरण (बी.ओ.टी.) आधार पर पश्चिम बंगाल राज्य में राष्ट्रीय राजमार्ग सं. 2 के पानागढ़-पालसिट खण्ड पर 517 कि.मी. से 581 कि.मी. के बीच मौजूदा 2 लेन वाले मार्ग विस्तार का पुनर्वास की परियोजना के लिए, जिसमें इसे द्विमार्गीय परिवहन मार्ग में परिवर्तित करते हुए इसका विस्तार 4 लेनों में किया जाना शामिल है। (फा. सं. 205/35/2002-आयकर नि.-II)

[अधिसूचना सं. 301/2003/फा.सं. 205/35/2002-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 21st November, 2003

S.O. 3364.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) Ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s. Mapex Infrastructure Pvt. Ltd. 87/1, First Floor, Tanupukur Road, Dhakuria, Kolkata for their project of rehabilitation of existing 2 lane stretch and widening thereof to 4 lane dual carriageway between KM 517 to KM 581 on National Highway-2 in Panagarh-Palsit section in the State of West Bengal on Build, Operate and Transfer (BOT) Basis.(F. No. 205/35/2002/ITA-II).

[Notification No. 301/2003/F. No. 205/35/2002/ITA-II]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 28 नवम्बर, 2003

का.आ. 3365.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2002-2003, 2003-2004 और 2004-2005 के लिए नीचे पैरा (3) में उल्लिखित उद्यम/औद्योगिक उपक्रम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है; अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ. के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स अशोक वास्तुशिल्प प्राइवेट लिमिटेड, 1/2 रिवर व्यू घारपुर घाट, अशोकस्तंभ, नासिक-422002 द्वारा भारत सरकार, महाराष्ट्र सरकार, अशोक बिल्डकॉन प्रा. लि. और अशोक वास्तुशिल्प प्रा. लि. के बीच दिनांक 16 नवम्बर, 1998 को किए गए करार के अनुसार निर्माण, संचालन और हस्तांतरण (बोट) के आधार पर गांव नशीराबाद, जिला-जलगांव, महाराष्ट्र के निकट राष्ट्रीय राजमार्ग-6 पर रेलवे ओवर ब्रिज के निर्माण के लिए उनकी परियोजना। (फा. सं. 205/11099-आई.टी.ए.-I)(खण्ड-I)

[अधिसूचना सं. 331/2003/फा.सं. 205/110/99-आयकर नि.-II (खंड-I)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 28th November, 2003

S.O. 3365.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962, for the assessment years 2002-2003, 2003-2004 and 2004-2005.

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) Ceases to carry on infrastructure facility; or

(b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is—

M/s. Ashoka Vastushilp Pvt Ltd, 1/2, River View, Gharpure Ghat, Ashok Stambh, Nasik-422002 for their project of construction of Railway Over Bridge on NH-6.

near Village Nashirabad, Distt. Jalgaon, Maharashtra on Build, operate and transfer (BOT) basis as per agreement dt 16th November, 1998 amongst Government of India, Government of Maharashtra, Ashok Buildcon Private Limited and Ashoka Vastuship Private Limited [F. No 205/110/99-ITA-II] Vol 1)

[Notification No. 331/2003/F. No. 205/110/99/ITA-II (Vol. 1)]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 28 नवम्बर, 2003

का.आ. 3366.—सर्वसाधारण की जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार आयकर नियमावली, 1962 के नियम 2ङ के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के प्रयोजनार्थ कर निर्धारण वर्ष 2003-2004, 2004-2005, और 2005-2006 के लिए नीचे पैरा (3) में उल्लिखित उद्यम को अनुमोदित करती है।

2. यह अनुमोदन इस शर्त के अधीन है कि :—

(i) उद्यम/औद्योगिक उपक्रम आयकर नियमावली, 1962 के नियम 2ङ. के साथ पठित आयकर अधिनियम, 1961 की धारा 10(23-छ) के उपबंधों के अनुरूप होगा और उनका अनुपालन करेगा;

(ii) केन्द्र सरकार यह अनुमोदन वापिस ले लेगी यदि उद्यम/औद्योगिक उपक्रम :—

(क) अवसंरचनात्मक सुविधा को जारी रखना बंद कर देता है; अथवा

(ख) खाता बहियों का रख-रखाव नहीं करता है तथा आयकर नियमावली, 1962 के नियम 2ङ के उप नियम (7) द्वारा यथा अपेक्षित किसी लेखाकार द्वारा ऐसे खातों की लेखा परीक्षा नहीं कराता है; अथवा

(ग) आयकर नियमावली, 1962 के नियम 2ङ. के उप नियम (7) द्वारा यथा अपेक्षित लेखा परीक्षा रिपोर्ट प्रस्तुत नहीं करता है।

3. अनुमोदित उद्यम/औद्योगिक उपक्रम है :—

मैसर्स इनफार्मेशन टेक्नालाजी पार्क लिमिटेड, व्हाइटफील्ड रोड, बेंगलूर, कर्नाटक द्वारा इण्टरनेशनल टैक पार्क, व्हाइटफील्ड रोड, बेंगलूर औद्योगिक पार्क के विकास, रख रखाव और संचालन के लिए उनकी परियोजना। [फा. सं. 205/187/99-आयकर नि.-II(खण्ड-I)]

[अधिसूचना सं. 332/2003/फा.सं. 205/187/99-आयकर नि.II (खंड-I)]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 28th November, 2003

S.O. 3366.—It is notified for general information that enterprise/industrial undertaking, listed at para (3) below has been approved by the Central Government for the purpose of Section 10(23G) of the Income-Tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962 for the assessment years 2003-2004, 2004-2005, and 2005-2006

2. The approval is subject to the condition that—

(i) The enterprise/industrial undertaking will conform to and comply with the provisions of Section 10(23G) of the Income-tax Act, 1961, read with rule 2E of the Income-tax Rules, 1962;

(ii) The Central Government shall withdraw this approval if the enterprise/industrial undertaking :—

(a) Ceases to carry on infrastructure facility; or

(b) fails to maintain books of accounts and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962; or

(c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income-tax Rules, 1962.

3. The enterprise/industrial undertaking approved is:—

M/s. Information Technology Park Ltd, Whitefield Road, Bangalore, Karnataka for their project of development, maintenance and operation of Industrial Park at International Tech Park, Whitefield Road, Bangalore [F.No. 205/187/99/ITA-II (Vol. 1)].

[Notification No. 332/2003/F. No. 205/187/99/ITA-II (Vol. 1)]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 28 नवम्बर, 2003

आयकर

का.आ. 3367.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्रीय सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ "संस्था" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित संस्था अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित संस्था प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गति-विधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित संस्था केन्द्र सरकार की तरफ से नामोदिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान कीगई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले, (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवा तल, कलकत्ता-700071; (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स नालन्दा डांस रिसर्च सेंटर, प्लाट सं. ए-7/1, एन.एस.रोड सं. 10, जे.वी.पी.डी. स्कीम, विले पार्ले (वेस्ट), मुम्बई-400049।	1-4-2000 से 31-3-2003

टिप्पणी : — अधिसूचित संस्था को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियें में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं. 333/2003/फा. सं. 203/42/2002-आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 28th November, 2003

(INCOME TAX)

S.O. 3367.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (iii) of Sub-section (1) of Section 35 of the Income Tax Act, 1961 read with Rule 6 of the Income Tax Rules, 1962 under the category "Institution" subject to the following conditions :—

(i) The notified Institution shall maintain separate books of accounts for its research activities :

(ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific and Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi—110016 for every financial year on or before 31st May of each year ;

(iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income Tax (Exemptions), 10 Middleton Row, 5th floor, Calcutta-700071 (b) the Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income tax/Director of Income Tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under Sub-section (1) of Section 35 of Income tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

Sl. No.	Name of the Organisation approved	Period for which notification is effective
1.	M/s. Nalanda Dance Research Centre, Plot No. A-7/1, N.S. Road No. 10, J.V.P.D. Scheme, Vile Parle (W) Mumbai-400049.	1-4-2000 to 31-3-2003

Notes : The notified Institution is advised to apply in triplicates as well in advance for renewal of the approval, to the Central Government through the Commissioner of Income Tax/Director of Income Tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 333/2003/F.No. 203/42/2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 28 नवम्बर, 2003

(आयकर)

का० आ० 3368.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ "संस्था" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित संस्था अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित संस्था प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित संस्था केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवा तल, कलकत्ता-70007। (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स गवर्नमेंट टूल रूम एंड ट्रेनिंग सेंटर, राजाजीनगर इंडस्ट्रियल एस्टेट, बंगलौर-560044	1-4-2000 से 31-3-2002

टिप्पणी :— अधिसूचित संस्था को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं. 334/2003/फा.सं. 203/25/2002-आयकर नि.-(II)]

संगीता गुप्ता, निदेशक आयकर नि.-(II)

New Delhi, the 28th November, 2003

(INCOME TAX)

S.O. 3368.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income Tax Act, 1961, read with Rule 6 of the Income Tax Rules, 1962 under the category "Institution" subject to the following conditions :—

(i) The notified Institution shall maintain separate books of accounts for its research activities;

(ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071 (b) the Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income tax/ Director of Income tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of Section 35 of Income tax Act, 1961 in addition to the return of Income tax to the designated Assessing Officer.

S. No.	Name of the organisation approved	Period for which notification is effective
1.	M/s. Government Tool Room and Training Centre, Rajajinagar Ind. Estate, Bangalore-560044	1-4-2000 to 31-3-2002

Notes :— The notified Institution is advised to apply in triplicates as well in advance for renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 334/2003/F. No. 203/25/2002-ITA. II]

SANGEETA GUPTA, Director (ITA. II)]

नई दिल्ली, 28 नवम्बर, 2003

(आयकर)

का० आ० 3369.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार द्वारा अधोलिखित संगठन को उसके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (ii) के प्रयोजनार्थ "संस्था" श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित किया गया है :—

(i) अधिसूचित संस्था अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगी;

(ii) अधिसूचित संस्था प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग 'टेक्नोलॉजी भवन' न्यू महरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगी;

(iii) अधिसूचित संस्था केन्द्र सरकार की तरफ से नामोद्दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों, जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संगठन पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रो, पांचवा तल, कलकत्ता-70007। (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्तूबर को अथवा उससे पहले प्रस्तुत करेगी।

क्रम सं.	अनुमोदित संगठन का नाम	अवधि जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स दि इंस्टीच्यूट ऑफ रोड ट्रांसपोर्ट तारामणि, चेन्नई-600113	1-4-2001 से 31-3-2004

टिप्पणी : — अधिसूचित संस्था को सलाह दी जाती है कि वह अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं. 335/2003/फा.सं. 203/6/2003-आयकर नि.-II]

संगीता गुप्ता, निदेशक आयकर नि.-(II)

New Delhi, the 28th November, 2003

(INCOME TAX)

S.O. 3369.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned below, for the purpose of clause (ii) of Sub-section (1) of Section 35 of the Income Tax Act, 1961, read with Rule 6 of the Income Tax Rules, 1962 under the category "Institution" subject to the following conditions :—

(i) The notified Institution shall maintain separate books of accounts for its research activities;

(ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Calcutta-700071 (b) the Secretary, Department of Scientific and Industrial Research, and (c) the Commissioner of Income tax/ Director of Income tax (Exemptions) having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income and Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of Section 35 of Income tax Act, 1961 in addition to the return of Income tax to the designated Assessing Officer.

S. No.	Name of the organisation approved	Period for which notification is effective
1	M/s. The Institute of Road Transport Taramani, Chennai-600113	1-4-2001 to 31-3-2004

Notes :— The notified Institution is advised to apply in triplicates as well in advance for renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of the application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 335/2003/F. No. 203/6/2003-ITA. II]

SANGEETA GUPTA, Director (ITA. II)]

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 4 दिसम्बर, 2003

का.आ. 3370.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में तथा जम्मू और कश्मीर सरकार से परामर्श करके डा. मुजफ्फर अहमद, निदेशक स्वास्थ्य सेवा, जम्मू और कश्मीर को इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में मनोनीत किया है।

अत : अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत" शीर्षक के अंतर्गत क्रम संख्या 15 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

"15.	डा. मुजफ्फर अहमद नगीन हजरत बल रोड, श्रीनगर-190006, कश्मीर	जम्मू और कश्मीर सरकार"

[सं. वी.-11013/1/2003-एम.ई. (नीति-I)]

पी.जी. कलाधरण, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 4th December, 2003

S.O. 3370.—Whereas the Central Government, in pursuance of clause (a) of Sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Jammu and Kashmir have nominated Dr. Muzaffar Ahmad, Director Health Services, J & K, to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :—

In the said notification, under the heading, "Nominated under clause (a) of Sub-section (1) of Section 3", for serial number 15 and the entries relating thereto, the following serial number and entries shall be substituted, namely :—

"15.	Dr. Muzaffar Ahmad, Nagin Hazratbal Road, Srinagar-190006, Kashmir	Government of Jammu & Kashmir"

[No. V. 11013/1/2003-ME(Policy-I)]

P.G. KALADHARAN, Under Secy.

नई दिल्ली, 4 दिसम्बर, 2003

का.आ. 3371.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उपधारा (1) के खण्ड (क) के अनुसरण में और राजस्थान सरकार से परामर्श करके डा. अशोक पांगारिया को 1 जनवरी, 2004 से पांच वर्ष की अवधि के लिए भारतीय आयुर्विज्ञान परिषद के एक सदस्य के रूप में मनोनीत किया है।

अत: अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण में केन्द्र सरकार एतद्द्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1960 की अधिसूचना संख्या का.आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में "धारा 3 की उपधारा (1) के खण्ड (क) के अधीन मनोनीत" शीर्षक के अंतर्गत क्रम संख्या 4 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां प्रतिस्थापित की जाएंगी, अर्थात् :—

"4.	डा. अशोक पांगारिया म.नं. 7, मोटी डूंगरी रोड, जयपुर	राजस्थान सरकार"

[सं. वी.-11013/1/2003-एम.ई. (नीति-I)]

पी.जी. कलाधरण, अवर सचिव

New Delhi, the 4th December, 2003

S.O. 3371.—Whereas the Central Government, in pursuance of clause (a) of Sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Rajasthan have nominated Dr. Ashok Pangariya to be a member of the Medical Council of India for a period of five years with effect from 1st January, 2004.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment in the notification of the Government of India in the then Ministry of Health number S.O. 138, dated the 9th January, 1960, namely :

In the said notification, under the heading, "Nominated under clause (a) of Sub-section (1) of Section 3", for serial number 4 and the entries relating thereto, the following serial number and entries shall be substituted, namely :—

"4.	Dr. Ashok Pangariya, H. No. 7, Moti Doongri Road, Jaipur	Government of Rajasthan"

[No. V. 11013/1/2003-ME (Policy-I)]

P.G. KALADHARAN, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3372.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 5-11-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **दिल्ली** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/2/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 20th November, 2003

S.O. 3372.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Delhi** which was constituted vide this Ministry's orders dated the 5-11-2001.

[F. No. 809/2/2000-F (C)]

P.P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3373.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 13-6-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **मुम्बई** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/2/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3373.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with Rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at Mumbai which was constituted vide this Ministry's orders dated the 13-6-2001.

[F. No. 809/2/2000-F (C)]

P.P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3374.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **तिरुवनन्तपुरम** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/6/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3374.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) Read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Thiruvananthapuram** which was constituted vide this Ministry's orders dated the 24-3-2001.

[F. No. 809/6/2000-F (C)]

P.P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3375.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा- (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **बंगलौर** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/3/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3375.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Bangalore** which was constituted vide this Ministry's orders dated the 13-6-2001.

[F. No. 809/3/2000-F(C)]

P. P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3376.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **गुवाहाटी** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/9/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3376.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Guwahati** which was constituted vide this Ministry's orders dated the 5-11-2001.

[F. No. 809/9/2000-F (C)]

P. P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3377.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **कटक** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/2/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3377.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Cuttack** which was constituted vide this Ministry's orders dated the 13-6-2001.

[F. No. 809/2/2000-F(C)]

P. P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3378.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **कोलकाता** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/7/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3378.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until

further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Kolkata** which was constituted vide this Ministry's orders dated the 24-3-2001.

[F. No. 809/7/2000-F(C)]

P. P. NAIR, Section Officer

नई दिल्ली, 20 नवम्बर, 2003

का.आ. 3379.—केन्द्रीय सरकार, चलचित्र (प्रमाणन) नियम, 1983 के नियम 7 और 8 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा- (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तथा इस विषय पर मंत्रालय के पहले के आदेशों के अनुक्रम में, इस मंत्रालय के दिनांक 24-03-2001 के आदेशों के तहत गठित किए गए केन्द्रीय फिल्म प्रमाणन बोर्ड, **चैन्नई** के सलाहकार पैनल के सदस्यों को दिनांक 31-01-2004 तक अथवा अगले आदेशों तक, जो भी पहले हो, पुन: नियुक्त करती है।

[फा. सं. 809/5/2000-एफ (सी)]

पी. पी. नायर, अनुभाग अधिकारी

New Delhi, the 20th November, 2003

S.O. 3379.—In exercise of the powers conferred by Sub-section (1) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rules 7 and 8 of the Cinematograph (Certification) Rules, 1983, and in continuation of this Ministry's earlier orders on the subject, the Central Government is pleased to re-appoint upto 31-1-2004 or until further orders whichever is earlier the members of the Advisory Panel of the Central Board of Film Certification at **Chennai** which was constituted vide this Ministry's orders dated the 24-3-2001.

[F. No. 809/5/2000-F(C)]

P. P. NAIR, Section Officer

संचार मंत्रालय

(डाक विभाग)

पोस्टमास्टर जनरल कार्यालय

(दक्षिण कर्नाटक क्षेत्र)

बेंगलूर, 1 दिसम्बर, 2003

का.आ. 3380.—जबकि भारत सरकार के संचार मंत्रालय (डाक विभाग) की अधिसूचना संख्या का. आ. 3901 दिनांक 18 मई 1976, भारत के राजपत्र के भाग II, खंड 3, उप खंड (ii) दिनांक 01 दिसम्बर 1979, पृष्ठ संख्या 3426 पर प्रकाशित, के द्वारा केन्द्र सरकार अन्यों के साथ, अधोहस्ताक्षरी को विभागीय जांच (साक्षियों की उपस्थिति एवं दस्तावेजों के प्रस्तुतीकरण प्रवर्तन) अधिनियम, 1972 (1972 का 18) की धारा 4 की उप धारा (1) के अधीन, उस सरकार के शक्ति प्रयोग हेतु विनिर्दिष्ट किया है।

और जबकि अधोहस्ताक्षरी का यह विचार है कि श्री जी. तिम्मरायप्पा, शाखा डाकपाल (पी.ओ.डी.), दिंडावर शाखा डाकघर, लेखा कार्यालय—आदिवाला उप डाकघर, चित्रदुर्गा जिला, कर्नाटक के विरुद्ध विभागीय जांच हेतु, निम्नलिखित व्यक्तियों को साक्षी के रूप में अथवा उनसे कोई दस्तावेज मांगने हेतु बुलाया जाना आवश्यक है :

1 श्रीमती जयम्मा, पत्नी श्री वीरभद्रप्पा, दिंडावर, आदिवाला

2 श्रीमती पुट्टम्मा, पत्नी श्री करियण्णा, मादेनहल्ली, दिंडावर, आदिवाला

3 श्री एस. एन. चिक्कण्णा, सुपुत्र श्री मुदियप्पा, मादेनहल्ली, दिंडावर, आदिवाला

अब इसलिए, उक्त अधिनियम की धारा 4 की उपधारा (1) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अधोहस्ताक्षरी, एतद्द्वारा उक्त श्री जी. तिम्मरायप्पा के विरुद्ध विभागीय जांच के संबंध में श्री के. वी. अनंतरामु, सहायक डाक अधीक्षक (मुख्यालय), डाकघर अधीक्षक कार्यालय, चित्रदुर्गा मंडल, चित्रदुर्गा-577501 को, उक्त अधिनियम की धारा 5 में विनिर्दिष्ट शक्तियों के प्रयोगार्थ जांच प्राधिकारी, प्राधिकृत करते हैं।

[सं. एसके/वीआईजी/2-2/2003]

मीरा दत्ता, आई.पी.एस., पोस्टमास्टर जनरल

MINISTRY OF COMMUNICATIONS

(Department of Posts)

OFFICE OF THE POSTMASTER GENERAL

(South Karnataka Region)

Bangalore, the 1st December, 2003

S.O. 3380.—Whereas by the notification of the Government of India in the Ministry of Communications (Department of Posts) No. S.O. 3901 dated the 18th May 1976, published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated 1st December 1979, at page 3426, the Central Government has specified, among others, the undersigned to exercise the powers of the government under Sub-section (1) of Section 4 of the Departmental Inquiries (Enforcement of attendance of witnesses and Production of Documents) Act, 1972 (18 of 1972).

And whereas the undersigned is of the opinion that for the purpose of Departmental Inquiry against Sri G. Thimmarayappa, Branch Post Master (POD) Dindavara Branch Post Office in account with Adivala Sub Post Office in Chitradurga Dist. of Karnataka, it is necessary to summon as witness or call for any documents from the following :

1. Smt. Jayamma W/o Veerabhadrappa Dindavara Adivala
2. Smt. Puttamma W/o Kariyanna Madenahalli Dindavara Adivala
3. Sri S. N. Chikkanna S/o Mudiayappa Madenahalli Dindavara Adivala

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 4 of the said Act the undersigned hereby authorizes Shri K. V. Anantharamu, ASP (HQ) O/o the Superintendent of Post Offices, Chitradurga Division, Chitradurga 577 501, the Inquiring Authority to exercise the powers specified in Section 5 of

the said Act in relation to Departmental Inquiry against the said Shri G. Thimmarayappa.

[No. SK/VIG/2-2/03]

MEERA DATTA I.P.S., Postmaster General

कोयला मंत्रालय

नई दिल्ली, 2 दिसम्बर, 2003

का.आ. 3381.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजन के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कोयला मंत्रालय के अधीन कोल इंडिया लि. (प्रधान कार्यालय), कोलकाता को जिसके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. ई.-12019/1/99-हिन्दी]

गार्गी मुखर्जी, निदेशक

MINISTRY OF COAL

New Delhi, the 2nd December, 2003

S.O. 3381.—In pursuance of Sub-rule (4) of the Rule 10 of the Official Languages (use for official purposes of the Union) Rules, 1976 the Central Government, hereby, notify Coal India Ltd. (Head Office) Kolkata under the Ministry of Coal, whereof more than 80% staff have acquired working knowledge of Hindi.

[No. E-12019/1/99-Hindi]

GARGI MUKHERJEE, Director

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(खाद्य और सार्वजनिक वितरण विभाग)

नई दिल्ली, 24 नवम्बर, 2003

का.आ. 3382.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय (खाद्य और सार्वजनिक वितरण विभाग) के प्रशासनिक नियंत्रणाधीन भारतीय खाद्य निगम के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत से अधिक कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :—

1. भारतीय खाद्य निगम, जिला कार्यालय, जनरल मोटर का कार्यालय, फासबेरी रोड़, शिवरी, मुम्बई-400033	2. भारतीय खाद्य निगम, जिला कार्यालय, सीतापुर, (उत्तर प्रदेश)	3. भारतीय खाद्य निगम, जिला कार्यालय, गोण्डा (उत्तर प्रदेश)

[सं. ई.-11011/1/2001-हिन्दी]

संजय कुमार श्रीवास्तव, संयुक्त सचिव

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Food and Public Distribution)

New Delhi, the 24th November, 2003

S.O. 3382.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (use for official purposes of the Union) Rules, 1976 the Central Government, hereby, notifies the following offices of Food Corporation of India under the administrative control of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), where of more than 80% of staff have acquired the working knowledge of Hindi :—

1. Food Corporation of India, District Office, Officer of General Motor, Fasberi Road, Shivri, Mumbai-400033.	2. Food Corporation of India, District Office, Sitapur, (U.P.)	3. Food Corporation of India, District Office, Gonda (U.P.)

[No. E-11011/1/2001-Hindi]

S.K. SRIVASTAV, Jt. Secy.

श्रम मंत्रालय

नई दिल्ली, 13 नवम्बर, 2003

का. आ. 3383. –औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. सेसा गोवा लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई नं०-2, के पंचाट (संदर्भ संख्या 51/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-11-2003 को प्राप्त हुआ था।

[सं० एल-29011/3/2000-आई.आर. (विविध)]

बी. एम. डेविड, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 13th November, 2003

S.O. 3383.—In pursuance of Section 17 of the Industrial Disputes, Act. 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 51/2000 of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 2 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 13-11-03.

[No. L-29011/3/2000-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) MUMBAI

PRESENT:

S. N. Saundankar, Presiding Officer.

Reference No. CGIT-2/51 of 2000

Employers in Relation to the Management of

(1) M/S. SEAS GOA LIMITED

The Managing Director,
M/s. Sesa Goa Limited,
Sesa Ghor, Patto Palaza,
Panji (Goa)-403 001.

(2) M/S. AGENCIA ULTRAMARINA PRIVATE LIMITED

The Managing Director,
M/s. Agencia Ultramarina Private Limited,
Roshan Mahal, Swatantrapath,
P.O. Box No. 42,
Vasco-da-Gama (Goa)-403 802.

V/s

THEIR WORKMEN
The General Secretary,
The Marmagoa Waterfront Workers Union.
Mukand Building, 2nd Floor,
P.O. Box No. 90,
Vasco-da-Gama (Goa).

APPEARANCES:

For the Employer No. 1	:	Mr. P. J. Kamat, Advocate
No. 2	:	Mr. Girish Sardesi Advocate
For the Workmen	:	Mr. B. B. Lakhakar Advocate.

Mumbai, dated 29th August, 2003

AWARD

The Government of India, Ministry of Labour by its Order No. L-29011/3/2000/IR(M) dated 19-5-2000/13-7-2000 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

> "Whether the action of the management of M/s. Agencia Ultramarina Private Limited Goa, in retrenching the services of 24 workmen (Annexure 'A') w.e.f. 30-6-1999 working in transhipper 'T.V. Orissa' of M/s. Sesa Goa Limited is legal and justified? If not, to what relief the workmen are entitled?"

ANNEXURE 'A'

List of the workmen who are our members involved in the dispute

Sl. No.	Names	Designation
1.	Manoj Sagaokar	Crane Operator
2.	Devu Shetgaokar	,,
3.	Sheik Abdul Rashid	,,
4.	Lawrence D' Silva	,,
5.	Alleluia Fernandes	,,
6.	Antonio D'Silva	,,
7.	Prakash Gawande	,,
8.	Sheikh Hassan	Fitter
9.	Socorro Marcelo	,,
10.	Sandeep Shirodkar	,,
11.	Patson Cardozo	,,
12.	Benjamin D' Silva	,,
13.	Wilson Dias	,,
14.	Jack Antao	,,
15.	Shivanand Ankhale	,,
16.	Digamber Giridhar	,,
17.	Epifanio Fernandes	,,
18.	Francis D'Sa	Electrician
19.	Rakesh Gopal	,,
20.	Kiran Honawarkar	,,
21.	Damodar Tirodkar	,,
22.	Anil Arondekar	Superviser
23.	Sheik Nooroddhin	,,
24.	Jozonho Fernandes	,,

2. The Marmagoa Water Front Workers Union vide Claim Statement (Exhibit 6) pleaded that the workmen under reference named in Annexure 'A' were working on the transhipper vessel "T.V. Orissa" belonging to and or owned by M/s. Sesa Goa Limited, a Company duly registered under the provisions of the Companies Act which appoints M/s. Agencia Ultramarina Private Limited, Vasco-da-Gama, Goa as its Contractor to provide the requisite number of employees for manning the work on their aforesaid vessel "T.V. Orissa". It is averred that Contractor M/s. Agencia Ultramarina Private Limited has been engaging the services of the employees under reference on the vessel since 1996 and accordingly it had engaged them for the period from March, 1996 to 31st March, 1997, 1-12-1997 to 15-6-1998, 16-6-1998 to 31-12-1998, and January, 1999 to December 1999. According to the Union, the work carried on the said vessel "T. V. Orissa", has been perennial and of continuous nature and that appointment of Contractor has been a mere

ploy resorted to by the principal employer M/s. Sesa Goa Limited. It is the contention of Union that even otherwise the various stipulations of these contracts spell out the various obligations cast upon the Contractor by M/s. Sesa Goa were never adhered to by either of them and that neither the contractor nor the principal employer are registered under the Contract Labour (Regulation and Abolition) Act though mandatory for the validity of such regulations and that in the absence of the registration the so called contract workers become the direct workers of the principal employer and that the same position has been accepted by M/s. Sesa Goa through the Contractor, as per the settlement dated 11-2-1998. It is averred that the Contractor by the letter dated 18th June, 1999 addressed to Assistant Labour Commissioner (Central) pointed out that the employer M/s. Sesa Goa terminated the contract work on "T. V. Orissa" and therefore they are compelled to close down the work resulting into termination of the service of the workers under reference though the contract for the year 1999 was for the whole year i.e. 1st January to December, 1999 which indicative to show that the Contractor was a mere ploy. It is averred that the "T.V. Orissa" resumed its activities in the month of November, 1999 in the port of Marmagao.after getting the vessel repaired/maintained. In spite of that the said Contractor by the order dated 3rd July, 1999 terminated the services of workers under reference for which the Union approached the Assistant Labour Commissioner (Central) who in turn tried conciliation but failed. It is contended that workmen under reference are the direct employees of the principal employer M/s. Sesa Goa Limited as they were working under the direct control and supervision of M/s. Sesa Goa and that the labour contractor was a fake and camouflage and therefore contended that retrenchment being illegal the workers under reference deserve to be reinstated with full back wages. The Union therefore prayed to direct the management M/s. Sesa Goa to reinstate the workmen in service with full back wages.

3. M/s. Sesa Goa Limited resisted the claim of Union by filing Written Statement (Exhibit 16) contending that it has closed down the business operations on "T. V. Orissa" Transhipper w.e.f. 11-6-1999 and that consequence of closure is not the retrenchment and that compensation payable on closure has been paid. It is pleaded that no employer-employee relationship exists between M/s. Sesa Goa and the workmen under reference, consequently, reference is not maintainable. It is contended that M/s. Sesa Goa is a Company registered under the Companies Act engaged in the business of extraction and export of iron ore. Barge Building, precision Engineering and manufacturing of Pig Iron and metallunical cope and that it also owns the sea going vessel M/s. T.V. Orissa which was initially registered under the Merchant Shipping Act of 1958 and that the said vessel is required under the Act to be statutorily manned by qualified persons under the Merchant Shipping Act of 1958. It is averred that in view of the business of extraction and export of iron ore and the huge investment on "T.V. Orissa" and the related running fixed costs for manning the said ships. Company opted to utilize the vessel for multiple purposes viz. as a sea going vessel and also as a transhipper depending upon the requirements and demand of the situation. It is contended that operations of loading and unloading on board "T.V. Orissa" is generally for the period from November to May every year and that extraction and export is only for the period of few months and the activities being seasonal and sporadic the transhipping activity is also seasonal. It is contended for the actual operations of loading and unloading at Marmagao Harbour the Company had to engage persons who are specialized in the performance of such jobs and therefore they had engaged Contractor M/s. Agencia Ultramarina being specialised in excavation of various operations and consequently the workers under reference were engaged by that Contractor, therefore question of termination to them by M/s. Sesa Goa does not arise. Management Sesa Goa denied that it had not sought registration certificate and the Contractor Agencia Ultramarina license under Section 7/12 of the Contract Labour (Regulation & Abolition) Act and for all these reasons it is contended that the claim being devoid of substance be dismissed with costs.

4. M/s. Agencia Ultramarina Private Limited supported the claim of M/s Sesa Goa and opposed the claim of Union vide Written Statement (Exhibit 19) contending that it had engaged the workers under reference to carry out specialised jobs assigned to them and that it had disciplinary and supervisory control over its workers and for this purpose, they had entered into contract from time to time with the workers under reference. It is averred that M/s. Agenda Ultramarina possesses a valid license under the Contract Labour (Regulation and Abolition) Act 1970. It is pleaded that operations of loading and unloading activities on board "T. V. Orissa" were for the period from November to May every year. It depends upon the export of iron ore and that activities of the mining are seasonal and consequently shipping activities are also seasonal. It is pleaded that the employer of the workers under reference is Agencia Ultramarina which had terminated the contract with M/s. Sesa Goa due to global recession vide letter dated 11-6-1999, consequently, it has closed the business/ operations of both T.V. Orissa w.e.f. 3-7-1999. It is contended that business was since closed workers under reference were retrenched by Agencia Ultramarina giving them retrenchment compensation under the provisions of the Industrial Disputes Act consequently Union's claim being ill founded be dismissed in toto.

5. By the Rejoinder (Exhibit 22 / 23) Union reiterated the recitals in the Claim Statement denying the averments in Written Statements of both the management contending both the management joining hands with each other with a

well planned strategy giving artificial breaks denying regularisation of service to workmen.

6. On the basis of pleadings Issues were framed Exhibit 26 and in that context Union filed affidavits in lieu of Examination in Chief of the General Secretary Mr. Rodrigues (Exhibit 63), workers—Operator Salgaonkar (Exhibit 64) and Fitter Dias (Exhibit 69) and closed oral evidence vide purshis (Exhibit 76). In rebuttal, Deputy Manager Mr. Satish Thayapurath of M/s. Sesa Goa and the Director of M/s. Agencia Ultramarina Private Limited. Shri Manerkar filed affidavits (Exhibit 83/86) and both the management orally closed their evidence on 9-5-2002/ 11-7-2002.

7. Union filed written submissions along with copies of rulings (Exhibit 90/99) and the management M/s. Sesa Goa (Exhibit 95). M/s. Agencia Ultramarina (Exhibit 96). On perusing the record as a whole, written submissions and hearing the counsels for all the three parties at length, I record my findings on the issues for the reasons mentioned below :

Issues	Finding
1. Whether the Reference is not maintainable as averred in Written Statement?	Reference is maintainable.
2. Whether, relations as employer and employee exists between party No.1 & 2 ?	Yes.
3. Whether the management closed the business as averred in the written statement and whether such a closure is lawful one ?	Management M/s. Sesa Goa has not closed the business.
4. Whether, it is proved that Management retrenched services of 24 workmen w.e.f. 30-6-1999, working in transhipper "T.V. Orissa" of M/s Sesa Goa Ltd. ? If yes, whether that action of management is legal and justified ?	As per order below.
5. If not, what relief if any, workmen are entitled to ?	As per order below.

REASONS

8. At the threshold the Learned Counsels for the principal employer Sesa Goa and the Contractor M/s. Agencia Ultramarina, Mr. Kamat and Mr. Sardesai inviting attention to the applications (Exhibits 24 & 25) and recital to this effect reproduced in written statements submitted that the issue is not properly referred in as much as Sesa Goa is not a party to the reference nor any relationship of employer-employee between the Sesa Goa and the workmen under reference exists, consequently question as to whether the retrenched workmen belong to the Contractor and the principal employer does not fall for the consideration of the Tribunal and on this count, the reference is not maintainable. They both urged with force that in catena of Judgments it is pointed out that the scope of the Tribunal under section 10(1) of the Industrial Disputes Act is limited and that this power cannot be enlarged, its adjudication is confined to the parameters of the provisions of the Act, and it cannot dispense its own brand of industrial dispute. They further submitted that the Tribunal constituted under the Act has to determine the dispute referred to it, it can have no power or authority whatever to deal with a dispute beyond that which can derive from or trace to Sections 7, 7A, 10, 14 & 15 of the Industrial Disputes Act. They have pointed out that functions of the Tribunal are quasi judicial but it is not a Civil Court. It has no inherent power to decide any of the disputes raised by the parties in their pleadings. In short, according to them the Tribunal has to function within the limits imposed upon it by the statute and has to act according to its provisions. It cannot arrogate to itself powers which the legislation alone can confer. In contra, the Learned Counsel Mr. Lakhakar for the Union submits that the Tribunal has ample jurisdiction to determine the issue regarding existence of relationship of an employer and employee and the ancillary issue connected to that. He submits that Sesa Goa in reality is the employer of the workers under reference however by a sham and camouflage contract, to deprive the workers from their legal rights Agenica Ultramarina a mere name lender which is a ploy and in this context the Tribunal has to look to the point appraising the entire position as held in case Steel Authority of India Ltd. Mr. Lakhakar submits that Tribunal is a creature of social statute of which object is to ensure social justice to both the employers and employees and advance the progress of industry and that it is a piece of legislation providing and regulating the service conditions of the workers. He submits that issue as regards relationship of employer-employee can only be adjudicated after going through the evidence and its scrutiny as a whole. He has relied on the case of Hindustan Antibiotics Ltd. V/s. The Workman AIR 1967 SC 948 wherein Their Lordships observed :

> "The Act is intended not only to make provision for investigation and settlement of industrial disputes but also to serve industrial peace so that it may result in more production and improve the national economy. The provisions of the Act have to be interpreted in a manner which advances object of the legislature contemplated in the statement of objects and reasons. While interpreting different provisions of the Act, attempt should be made to avoid industrial unrest, secure industrial peace and

to provide machinery to secure that end. In dealing with industrial disputes, the courts have always, emphasized the doctrine of social justice which is founded on basic ideal of socio-economic equality as enshrined in the Preamble of our Constitution. While construing the provisions of the Act, the court have to give them a construction which should help in achieving the object of the Act."

9. Mr. Rodrigues, the General Secretary of the Union stated that the workers under reference were engaged on the vessel "T.V. Orissa" belonged to Sesa Goa at the instance of Mr. Manerkar of Agencia Ultramarina, acting on behalf of the Sesa Goa Limited and that the workers under reference were paid wages by M/s. Sesa Goa through the said Agencia Ultramarina's office. He categorically disclosed that the Sesa Goa had confirmed the settlement signed dated 11.2.1998 and added that the work carried out on the vessel was of perennial nature and the service of the workers was continuous. In his evidence Mr. Rodrigues disclosed that the terms of the contract and other stipulations show that the contract between Agencia Ultramarina and Sesa Goa was sham, fake and that the Contractor is a mere name lender and a camouflage. He disclosed that the work of the workmen was supervised by the shift engineers employed by M/s. Sesa Goa, the directions as to the manner of the work from time to time, the strength, wages etc. are to be fixed by Sesa Goa. According to him, in reality Sesa Goa was employer of workmen and M/s. Agencia Ultramarina only a mediator. The Deputy Manager of M/s. Sesa Goa Mr. Thayapurath in his evidence much stated that M/s. Agencia Ultramarina had engaged the workers under reference and that they were contract labourers and not the employees of Sesa Goa. In his cross-examination para 55 Mr. Thayapurath conceded that he is unaware of the administrative affairs of Agencia Ultramarina and that he has no personal knowledge on the events of the said Company. It is significant to note that Mr. Thayapurath though unaware on the affairs of Agencia Ultramarina, still went on to state that the workers under reference were engaged and paid by Agencia Ultramarina and that they are workers of said Agencia Ultramarina. It is to be noted that Mr. Manerkar the Director of M/s. Agencia Ultramarina was admittedly paid by M/s. Sesa Goa Rs.15,000/- per month from June to September and Rs.25,000/- from October to May, which indicative to show that this Director is in reality employee of M/s. Sesa Goa and that he had engaged the workers which inevitably point out the workers under reference were engaged by the employee of M/s. Sesa Goa and consequently they are the workers of Sesa Goa. True it is, Mr. Rodrigues in his cross-examination para 10 stated that Sesa Goa was principal employer and M/s. Agencia Ultramarina the contractor and that services of workers were terminated by Ultramarina. So also workers who were working as Operator and Fitter on "T.V. Orissa" Transhipper viz. Salgaonkar and Dias pointed out that they were paid wages and terminated by the Agencia Ultramarina. However the fact that Mr. Manerkar an employee of Sesa Goa since employed the workers under reference, if considered in the light of the terms of the contract dated 6.2.1997, 24.2.1998, 20.7.1998 and 2.1.1999 admittedly entered with M/s. Sesa Goa speaks volume from which an irresistible inference could be drawn is that the workmen under reference are of M/s. Sesa Goa.

10. It is in the evidence of Deputy Manager of M/s. Sesa Goa Mr. Thayapurath that due to acute business depression and on account of recessionary trends in the global economy resulted in reducing demands for Iron Ore as well as reduction in prices the Company decided to use the said "T.V. Orissa" as an ocean going vessel and consequently by the letter dated 11.6.1999 terminated the contract with Agencia Ultramarina Private Limited and that accordingly Ultramarina retrenched all its workmen working in the said vessel, complying the statutory requirements under the Industrial Disputes Act. It is material to note that the contract since the year 1996 is for a year and the vessel is the asset of the Company. The Sesa Goa had offered employment to some of the workers under reference. Mr. Thayapurath admits that Company extracts ore from the mines at the place Codli, Sonshi, Sanquelim, Sirsaim and that mining operations are still going on for which Marmagao Port Trust allowed the space every year to store etc. He has clearly admitted that Company used to be the highest in the export of iron ore. Company is silent on the compliance of the requirement in Schedule V-A & V-B of the Industrial Disputes Act. This shows that the business of Sesa Goa is still going on therefore hardly can be said that the business was closed therefore question of closure does not arise.

11. The Learned Counsel Mr. Lakhakar urged with force that in March 1996 when the workmen under reference were engaged to work on "T.V. Orissa" neither the principal employer nor the alleged contractor held certificate/license under Section 7/12 under the Contract Labour (Regulation & Abolition) Act and as such they were prohibited from engaging the alleged contract labour, therefore the workers under reference are required to be treated as employees of the Sesa Goa. On perusal the record it is seen for the first time the registration was sought by M/s. Sesa Goa in 1998 which clearly support the above said contention of Mr. Lakhakar.

12. So far the nature of work of workers under reference is concerned, according to Sesa Goa it is seasonal. It is in the evidence that since the work reduced Sesa Goa cancelled the Contract with M/s. Agencia Ultramarina. From the voluminous record it is seen workers were engaged also in the year 1996 for a period of one year and thereafter. Some workers under reference as stated above were recalled for work however they refused to join as other co-workers were not called which shows the transhipping activities go on through out the year and the work is of perennial nature. When the work exists, mining

business is going on and the ship "T.V. Orissa" is used as transhipper, and the workers under reference are in reality the workers of M/s. Sesa Goa and that M/s. Agencia Ultramarina is an agent, a mere ploy, a name lender, if looked the contracts in the light of observation in case Steel Authority of India Limited coupled with the evidence as a whole safely go to show that contracts are sham and camouflage, consequently the reference is maintainable and that this Tribunal has jurisdiction in width to adjudicate the same. In this context the action of the employer M/s. Sesa Goa in retrenching the workmen through M/s. Agencia Ultramarina a name lender is wholly illegal and improper.

13. The Learned Counsel Mr. Sardesai inviting attention to the admissions given by the General Secretary of the Union Mr. Rodrigues and the workers named above, in reference to rulings cited by him and Mr. Kamat urge with force that itself indicate workers under reference were contract labourers consequently M/s. Sesa Goa does not come into picture as their employer and as such, the prayer of workmen to direct M/s. Sesa Goa to reinstate them in the service of the said Company is ill-founded and consequently cannot be considered. The fact that workers under reference were engaged by Mr. Manerkar the employee of M/s. Sesa Goa which establish the relationship of employer and employee between the Sesa Goa and the workers under reference, and that M/s. Agencia Ultramarina is only a name lender and consequently the contract between Ultramarina and Sesa Goa is sham and camouflage and that business of Sesa Goa has not been closed, the retrenchment of workmen under reference, is wholly illegal and improper, consequently the workmen under reference are entitled to reinstatement in service of M/s. Sesa Goa with full back wages. Issues are answered accordingly and hence the order :

ORDER

The action of the employer M/s. Sesa Goa through its agent a mere name lender M/s. Ultramarina, in retrenching the 24 workmen under reference working in transhipper "T.V. Orissa" owned by it w.e.f. 30.6.1999 is illegal and improper, consequently the employer M/s. Sesa Goa is directed to reinstate the workers under reference in service with full back wages and continuity in service.

S.N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2003

का. आ. 3384.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. वी. जी. क्वेनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई नं०-1, के पंचाट (संदर्भ संख्या 1/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं० एल-29011/52/2000-आई.आर.(विविध)]

वी. एम. डेविड, अवर सचिव

New Delhi, the 13th November, 2003

S.O. 3384.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Sesa Goa Ltd. and their workman, which was received by the Central Government on 12-11-2003.

[No. L-29011/52/2000-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 GOA CAMP

PRESENT:

Shri Justice S.C. Pandey, Presiding Officer

REFERENCE NO. CGIT-1/2001

PARTIES:

Employers in relation to the management of

M/s. V.G. Queni, Goa

And

Their Workmen

APPEARANCES:

For the Management	:	Mr. U. Kamath, Advocate
For the Workmen	:	Absent
State	:	Goa

Goa, dated 28th October, 2003

AWARD

1. This is a reference made by the Central Govt. under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) for deciding the dispute between M/s. V.G. Queni, Goa *l/s.* Karna Bahadur Karka (the workman for short). The terms of reference given in the schedule are as follows :

"Whether the action of the management of M/s. V.G. Queni, Goa in discharging Sh. Karnabahadur Karka, Security Guard from their service w.e.f. 28-9-1999 is legal and justified ? If not, to what relief the workman is entitled for?."

2. It appears that the workman was represented by the Goa Mining Labour Welfare Union, Velhi's Building, Opp. Municipal Garden, Panjim.

3. The order sheet discloses since the receipt of reference between 17-1-2001 to 13-12-2002 no one appeared for both the parties. On 14-1-2003 at Goa Camp one Subash Nair appeared for the Union and Sh. U. Kamath, Advocate appeared for the workman. Both the parties were directed to file the Statement of claim and their written statement by registered post. The case was then adjourned for hearing at Goa on 27-10-2003. Nobody appeared for the union but one Mr. U. Kamath appeared for the management. The case was adjourned for 28-10-2003 for appearance of the union or workman. None of the parties appeared. Therefore, the case is closed for passing of Award.

4. It appears that the Union is not interested in prosecuting the claim of the workman on whose behalf the reference was made by Central Govt. In the opinion of this Tribunal, it appears that there is no dispute now which has to be decided by this tribunal as the union is not prosecuting the claim of the workman.

5. Accordingly, this reference is answered by saying that there is no dispute which is to be decided by this tribunal as the workman is not prosecuting the reference and the dispute between the workman and M/s. V.G. Quenim, Goa does not survive.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2003

का. आ. 3385.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. वी. जी. क्वेनिम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई नं० 1, के पंचाट (संदर्भ संख्या 43/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं० एल-29011/37/99-आई आर.(विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 13th November, 2003

S.O. 3385.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 43/99) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s V.G. Quenim and their workman, which was received by the Central Government on 12-11-2003.

[No. L-29011/37/99-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 GOA CAMP

PRESENT:

Shri Justice S.C. Pandey, Presiding Officer.

REFERENCE NO. CGIT-43/1999

PARTIES:

Employers in relation to the management of

M/s. V.G. Quenim.

And

Their Workmen

APPEARANCES:

For the Management	:	Mr. U. Kamath, Advocate
For the Workmen	:	Absent
State	:	Goa

Goa, dated 28th October, 2003

AWARD

1. This is a reference made by the Central Govt. under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (the Act for short) for deciding the dispute between M/s. V.G. Quenim, *Vs.* Their workmen (the workman for short). The terms of reference given in the schedule are as follows :

> "Whether the action of the management of M/s. V.G. Quenim, Goa in laying off 19 workmen (as per list enclosed) Annexure IV working in their Sonshi Mines, Goa is legal and justified ? If not, to what relief the workmen are entitled for?."

2. It appears that the workman was represented by the Goa Mining Labour Welfare Union, Velhi's Building, Opp. Municipal Garden, Panjim.

3. The order sheet discloses since the receipt of reference between 29-11-1999 to 13-12-2002 no one appeared for both the parties. On 14-1-2003 at Goa Camp one Subash Nair appeared for the Union and Sh. P.J. Kamath, Advocate appeared for the workman. Both the parties were directed to file the Statement of claim and their written Statement by registered post. The case was then adjourned for hearing at Goa on 27-10-2003. Nobody appeared for the Union but one Mr. U.Kamath appeared for the management. The case was adjourned for 28-10-2003 for appearance of the union or workman. None of the parties appeared. Therefore, the case is closed for passing of Award.

4. It appears that the Union is not interested in prosecuting the claim of the workman on whose behalf the

reference was made by Central Govt. In the opinion of this Tribunal, it appears that there is no dispute now which has to be decided by this Tribunal as the Union is not prosecuting the claim of the workman.

5. Accordingly, this reference is answered by saying that there is no dispute which is to be decided by this tribunal as the workman is not prosecuting the reference and the dispute between the workman and M/s. V.G. Quenim, Goa does not survive.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2003

का. आ. 3386.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. वी. जी. क्वेनिम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई नं० 1, के पंचाट (संदर्भ संख्या 2/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं० एल-29011/51/2000-आई.आर.(विविध)]

बी. एम. डेविड,अवर सचिव

New Delhi, the 13th November, 2003

S.O. 3386.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 2/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s V.G. Quenim and their workman, which was received by the Central Government on 12-11-2003.

[No. L-29011/51/2000-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 GOA CAMP

PRESENT :

Shri Justice S.C. Pandey, Presiding Officer.

REFERENCE NO. CGIT-2/2001

PARTIES :

Employers in relation to the management of

M/s. V.G. Quenim,

And

Their Workmen

APPEARANCES :

For the Management	:	Mr. U. Kamath, Advocate
For the Workmen	:	Absent
State	:	Goa

Goa, dated the 28th October, 2003

AWARD

1. This is a reference made by the Central Govt. under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act. 1947 (the Act for short) for deciding the dispute between M/s. V.G. Quenim, Vs. Narbahadur Weli (the workman for short). The terms of reference given in the schedule are as follows :

> "Whether the action of the management of M/s. V.G. Quenim, Goa in discharging Sh. Narbahadur Weli, Security Guard from their service w.e.f. 28-9-1999 is legal and justified ? If not, to what relief the workmen is entitled for?."

2. It appears that the workman was represented by the Goa Mining Labour Welfare Union, Velhi's Building, Opp. Municipal Garden, Panjim.

3. The order sheet discloses since the receipt of reference between 17-1-2001 to 13-12-2002 no one appeared for both the parties. On 14-1-2003 at Goa Camp one Subash Nair appeared for the Union and Sh. U.Kamath, Advocate appeared for the workman. Both the parties were directed to file the Statement of claim and their written Statement by registered post. The case was then adjourned for hearing at Goa on 27-10-2003. Nobody appeared for the Union but one Mr. U.Kamath appeared for the management. The case was adjourned for 28-10-2003 for appearance of the Union or workman. None of the parties appeared. Therefore, the case is closed for passing of Award.

4. It appears that the Union is not interested in prosecuting the claim of the workman on whose behalf the reference was made by Central Govt. In the opinion of this Tribunal, it appears that there is no dispute now which has to be decided by this Tribunal as the Union is not prosecuting the claim of the workman.

5. Accordingly, this reference is answered by saying that there is no dispute which is to be decided by this Tribunal as the workman is not prosecuting the reference and the dispute between the workman and M/s. V.G. Quenim, Goa does not survive.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2003

का. आ. 3387.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मै. इंजीनियर्स इण्डिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण मुंबई नं० 1, के पंचाट (संदर्भ संख्या 49/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं० एल-30012/11/2000-आई.आर.(विविध)]

बी. एम. डेविड,अवर सचिव

New Delhi, the 13th November, 2003

S.O. 3387.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 49/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai No. 1 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Engineers India Ltd. and their workman, which was received by the Central Government on 12-11-03.

[No. L-30012/11/2000-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

PRESENT:

SHRI JUSTICE S. C. PANDEY.
Presiding Officer.

REFERENCE NO. CGIT-49/2000

Parties: Employers in relation to the management of Engineers India Limited

And

Their Workmen

APPEARANCES :

For the Management	:	Sh. Alva, Advocate
For the Workman	:	M.B. Anchan, Advocate
State	:	Maharashtra

Mumbai, dated 31st day of October, 2003.

AWARD

1. The Central Government has referred the industrial dispute to this tribunal by virtue of the powers conferred upon it by clause (d) of sub-section 1 and sub section 2A of the Industrial Disputes Act, 1947 (the Act for short). The dispute is between Engineers India Ltd. (the company for short) and Sh. Gajanan Patil (The workman for short) who was serving with the company as a messenger. For the sake of convenience, it would be proper to reproduce the terms of Reference given in schedule of the order of reference.

> "Whether the action of the management of Engineers India Ltd., Mumbai in terminating the employment of Sh. Gajanan N. Patil, ex-Messenger, w.e.f. 1-1-1999 is legal and justified ? If not, to what relief the workman concerned entitled?"

2. Only those essential facts are being stated which this tribuunal considers necessary for the disposal of the preliminary objection raised on behalf of the company. The workman filed his statement of claim stating, inter alia, that he was initially appointed as a Messenger by the company on 31-12-1992 for a period of one year, in writing by letter dated 16-12-1993. His services were terminated by letter dated 30-6-94. The workman was again appointed on 6-8-1996 as per letter dated 22-7-1996 for a period of year. Thereafter, his appointment was further extended upto 31-12-98. The services of the workman were terminated vide letter dated 31-12-1998. The sum and substance claim of the workman was that he had worked continuously for 240 days in twelve months preceding the date of his termination. The retrenchment of his service was in violation of section 25F of the Act as he was neither noticed nor was he paid the retrenchment compensation. Thus the order dated 31-12-98 was null and void. His services could not be terminated with effect from 1-1-1999. It is not necessary to refer to other facts which are subsidiary and were stated to bolster up the claims of the workman regarding his claim. They are not relevant for deciding the controversy.

3. In the written statement, the company *inter alia* had taken one of the preliminary objection was to the following effect.

"2. Th. appropriate Government for the Company is the State Government under Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

4. In rejoinder filed on behalf of the workman it was stated as follows in paragraph 2 and 3.

"3. With reference to paragraph 1(b) of the Written Statement, the workman denies that the appropriate Govt. is the State Government. The workman submits that the Company is a Government of India Undertaking and as such the State Government has no jurisdiction to entertain the above dispute and therefore the reference has been validly made by the Central Government".

"3. With reference to paragraph 2 of the written statement, the workman denies that the State Government is the appropriate Government. The workman submits that the facts of the Steel Authority of India case are different than the facts of this case".

Thereafter on 06-1-2003 the counsel for the company filed an application to the effect that the issue if reference was maintainable should be tried as preliminary issue. Thereafter, the case was adjourned on 02-1-2003 at his request on 17-2-2003. On 17-2-2003 the learned counsel prayed for time to file documents. On 11-3-2003 the case was again adjourned to 21-4-2003, 10-6-2003. On 10-6-2003 Sh. Alwa wanted to file an amendment application. On 21-7-2003 an application for amendment was filed. Then the counsel for workman filed his reply on 22-10-2003. The amendment application as well as the preliminary issue were also heard by this tribunal as this tribunal was of the view that amendment was not necessary to decide the preliminary issue. The case could be heard on the basis of

Memorandum and Articles of Association of Engineers India Ltd. and the certificate of Incorporation as it is not in dispute that the documents filed by the company are not the documents they purport to be.

5. The reasons for rejection of the amendment application are that the company had already taken the plea that approporiate Government under section 2(a) of the Act is the State Government. There are further pleadings in 2(a) of the written statement which deals with nature of objection. There is also reference in paragraph 2(b) about the nature of company.

"The Company is a Government of India Consultancy Organization, providing services to various Private and Public Sector Companies for building projects in Petroleum Refineries, Petrochemials and other multipurpose industrial projects".

6. The further amendment in the written statement in the nature of evidence which can be proved by the Memorandum of Article of Association and the Certificate of Incorporation. It is not necessary for the company to plead those facts which are in the nature if evidence.

7. The learned counsel for the company argued that whatever be the legal position, prior to delivery of judgement of Supreme Court in the case of Steel Authority of India Ltd. and others vs. National Union Water Front Workers 2001 III CLR 349, the legal position is that reference cannot be made by the Central Govt. in respect of the dispute between the company and the workman for the reason it is not the appropriate Government. It is argued that company is not one of those companies specifically named in section 2(a) of the Act. It is not controlled industry and accordingly specified by the Central Govt. Therefore, only relevant test for deciphering the appropriate Government in relation to the company would be record finding if as a matter of fact the (i) company is carried on by the Central Government or in the alternative (ii). It is carried on under the authority of the Central Government. In his submission the company was neither. He relied upon the Certificate of Incorporation and the Memorandum of Association and the Articles of Association of the company.

8. The learned counsel for the workman on the other hand submitted that the company was the agent of the Central Government. It was argued, that it is well established that question of interpretation of section 2(a) to particular industry depended upon the facts of each case. It was pointed out, even though, the company in question was not actually run by the Central Government the Memorandum of the Articles of Association indicated that company in question was a government company. The main object of the company was to provided consultancy services for Petroleum projects relating to the exploration and production of oil transportation of oil and gas and the by product of the industry compendensiously called petro-chemicals. It also undertook to provide services to industrial projects for their upkeep and early construction. It also under took the business of manufacturing and repairing plants and sold and purchased metals, minerals, mineral substances, chemical goods, materials in connection with the main objects of the company. These objects showed main business of the company was connected with the oil filed and refineries. The rest of it was ancillary business which was the bye-products of the main business. It was argued that the Articles of Association should be read as a whole. It was argued that the President of India held 51% of shares and rest of shares were held by Bachetel International Corporation, Delware (24%) and R. M. Dorman 25% personally. It has been pointed out that the Directors of company shall be appointed by the President of India. They shall be not less than five in number. They shall hold their office till the President of India decided to remove them and the President of India had power to fill the vacancy. The President has power to appoint from amongst Director a full time Director on the advise of Managing Director. The Managing Director too was also appointed by the President of India. The Chairman of the Board of Directors has to be nominated by President of Inbdia. According to learned counsel the financial control is exercised by that approval of the President of India has to be obtained for securing money of the company. The Chairman has power to reserve for the consideration of the President of India any proposal, decision of the Directors. The decision of the President of India shall be deemed to be final. Apart from sanction of the President of India the instance of the Chairman there are special provisions under clause 100 (c)(i)(ii)(iii) show that the President exercise considerable powers in the matter of appointment of higher officials of the company in the matter of sole lease exchange, mortgage and/or disposal of part or whole of the company, whose book value exceeded Rs. 10 lakhs. It has also been provided as per clause 100 (c) (iii) number of matters vital to the business of the company has to reserved for approval of the President of India. The clause (d) gave right to the President to issue regarding finances, conduct of business and affairs of the company. It has been argued that the degree of control exercised by the President of India cumulatively is suficient proof that the company is controlled by the Central Govt. through its Chief Executives, the President of India, who constitutionally acts on the aid and advise of the Council of Ministers. It may be seen that so far as this case is concerned this tribunal is required to find out if the Central Government is the "appropriate Government" in relation to the present industrial dispute. Therefore, we have to weed out unnecessary material and confine it that portion of section 2(a)(1) and 2(a)(ii) of the Act which is relevant. Thus read section 2(a)(1) is reduced to "appropriate Govt. means"

(i) In relation to any industrial dispute concering any industry carried on by or under the authority of the Central Government And 2 (a) (ii) would be

(ii) In relation to any other Industrial Dispute, the State Government.

Thus, the **sine qua non** for industry to be covered by 2(a)(1) of the Act would be that the (a) the industry should be carried on by the Central Government or/and it should be carried on under the authority of the Central Government. It is not in dispute and, it cannot be disputed that the Central Govt. is not carrying on the business of running the company. Therefore, the essential question of the company is running under the authority of Central Government. The natural question that has to be answered is: What is the test for judging, Whether an industry is run under the authority of Central Government? The words "under the authority" imply, by virtue of the authority, that is to say, the Company undertaking or the organisation known as industry, must do whatever it does, by virtue of powerd conferred by the Central Govt. In other words, the Central Government should have control over the industry as the owner has over it. The Central Government should dominate over the functioning of company as the owner or proprietor could do. The Article 12 of the Constitution of India employs much wider language when it includes other authorities ..... under the Control of Govt. of India. In our case the control by itself is not enough. The industry should run by delegated authority of the Central Government. Therefore, the Supreme Court in the case of Steel Authority of India Ltd. vs. National Union Water Front Workers (supra) rejected the test applied by itself in the cases under Article 12 of the Constitution of India.

10. The Supreme Court on the other hand referred to its earlier decision i.e. Heavy Engineering Mazdoor Union vs. State of Bihar, 1970 Lab IC 212, Rashtriya M.U. Mazdoor Sangh, Nagpur vs. Model Mills, 1988 Labour IC 382 or holding that the test laid down in those cases shall apply. Therefore this tribunal is required to find out if it can be inferred from Memorandum of Association of the Company that the company is being carried on under the authority of the Central Government. It is registered as Engineers of India Ltd. under the Companies Act, 1956. Its main business appear to be that of performing consulting services for Petroleum projects like refineries oil fields etc. and other types industrial projects. The engineering works regarding construction of buildings, plants, machineries, equipment and tools etc. It deals in metals also. Thus if all the objetes of the company show that it an independent company for doing engineering works of all kinds with emphasis on pertoleum products. It is an independent entity as per Clause 19 of the objects it can enter into agreement with the Govt. of India. It has already been pointed out that 51% of shares of company is held by the President of India. Besides that President of India nominates the Chairman of Board of Directors annually Clause (99), the Managing Director. The Board is required to reserve for decision of President of India of posts of Chairman, Managing Director, Functional Director or any other members of the Board of Directors, appointments to the higher category of posts, appointment of General Manager. The Board is further required to reserve its decision for the approval by the President regarding sale, lease, exchange, mortgage or disposal of any undertakings whose book value exeeds 10 lakhs. Apart from the approval of the President is required by Board of Director regarding promotion of companies, partnership or sharing profits, formation of subsidiary companies, acquisition of share of other companies, Undertaking any work involving capital expenditure more than 5 crores, regarding the amount allotted for retiral benefits from the profits of the company, foreign collaboration, issuance of directions in public interest etc. A study of these Articles of Association do show that President of India exercises considerable control over the company as a holder of 51% share of the company.

11. The question is if we can say from the study of Articles of Association that the degree of control President is such that it can be said that the company is carried on by the Central Govt. It is not enough that the President has some financial control over the company or that the President appoints Chairman or Managing Director. The control given in the Article of Association is mainly Supervisory control because majority of shares are held by the President of India. But that is not sufficient. It should be established that Central Government has decided to carry on the industry through the company. In other words, the Company is owned and sustained by the Central Govt. and that the legal entity registered under the Companies Act is a delegate or the agent of the Central Govt. This does not follow from the Memorandum and Articles of Association. This tribunal finds support for its conclusion from the decision of Heavy Engineering Mazdoor Union vs. State Bihar (supra). The company in that case was not held to be agent of the Central Govt. under similar circumstances Now, as this case has been approved by Five Judge Bench of Supreme Court, there is no scope for holding that the company is carried on under the authority of the Central Government on the case of Steel Authority of India (supra).

12. Consequently, this reference is answered by saying that the Central Govt. is not authorized to refer this dispute to this tribunal in view of the decision of Five Judge Bench of Supreme Court in case of Steel Authority of India Ltd. and others vs. National Union Water Front Workers, 2001 III CLR 349. Consequently, this tribunal has no jurisdiction to proceed further with the reference

S. C. PANDEY, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2003

का.आ. 3388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ए.पी. मिनरल डवलपमेंट कार्पो. लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, हैदराबाद के पंचाट (संदर्भ संख्या 1/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल.-29012/84/97-आई. आर. (विविध)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 13th November, 2003

S.O. 3388.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of A. P. Mineral Development Corporation Limited and their workman, which was received by the Central Government on 12-11-2003.

[No. L-29012/84/97-IR (M)]

B. M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT ATHYDERABAD

PRESENT : Sluri E. Ismail, B. Sc., L.L.B.,

Presiding Officer

Dated, the 3rd day of October, 2003

INDUSTRIAL DISPUTE No. 1/2002

(Old I.D. No. 138/2000 Transferred from Industrial Tribunal-I, Hyderabad

BETWEEN:

The General Secretary,
A.P.M.C. Workers Union,
Barytes Project,
Mangampet-516106.
Cuddapah District. .... Petitioner

AND

The Vice Chairman and
Managing Director,
A. P. Mineral Development
Corporation Ltd.,
Pancom Business Centre,
2nd & 3rd floor,
8-3-945, Ameerpet,
Hyderabad-500016. .... Respondent

APPEARANCES:

For the Petitioner : Sri K. Balagopal, Advocate

For the Respondent : M/s. A. Sudarshan Reddy, G. Madhusudhan Reddy and G. Sree Ram Reddy, Advocates

AWARD

The Government of India, Ministry of Labour by its Order No. L-29012/84/97-IR(Misc.) dated 2-6-2000 referred the following dispute under Section 10(1) (d) of the I.D. Act, 1947 for adjudication to the Industrial Tribunal-I, Hyderabad between the management of Andhra Pradesh Mineral Development Corporation Limited and thier workman which has been transferred to this Tribunal in view of Government of India, Ministry of Labour's Order No. H-11026/1/2001-IR(C.II) dated 18-10-2001 bearing No. 138/2000. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Pradesh Mineral Development Corporation Limited for not regularizing the services of 181 daily rated workmen (as per Annexure) for not granting the pay scales on par with the regular employees though they have completed more than 10 years of continuous service is justified ? If not, to what relief is these 182 daily rated workmen are entitled?"

The reference is renumbered in this Tribunal as I.D. No. 1/2002 and notices issued to the parties.

2. The brief points averred in the claim statement are : That the workers concerned are employed in the Barytes Project of the Respondent Corporation at Mangampet, Cuddapah District. The principal work done at the project is the mining of Barytes ore, breaking it into pieces, powdering it and packing it. Necessary adjunct to the principal activity is the removal of over-burden, pumping of accumulated water from the mines, operating the power generator, running the Weigh Bridge, routine maintenance and cleaning of the establishment etc. The removal of the overburden and the excavation of the ore are given on contract but the rest of the work is done by the workers employed by the Respondent Corporation. All workers have been recruited as daily wage workers which applies to the skilled workers as well as the semi-skilled or unskilled workers. As a consequence of the agitation of the workers the Respondent corporation has entered into agreements on three occasions in the past, regularizing some of the daily wage workers within each category on the basis of seniority. The last such regularization was done in the year 1989. At the time of conciliation of the present dispute in 1977, there were 202 regular workers and 181 daily rate workers. The dispute regarding regularization of 181 daily rated workers have been pending from 1989. As the Respondent has no reasonable or rational policy of regularization, they have

not been extended that benefit. This has led to the anomaly that different batches of workers have been regularized upon putting in different numbers of years of service upto 1989, but others are yet to be regularized, even though many of them have put in as much as the service put in by those regularized in 1989, or before, at the time of their regularization. The Petitioner Union is the biggest of all Barytes Project unions and it has led a number of agitations after 1989 for regularization of the remaining 181 workers. The management has not accepted this demand, but it has entered into a settlement with this Petitioner Union to apply the principle of Equal Pay for Equal Work to the daily wage workers which was entered into in 1996 by virtue of which it was agreed that whenever 'the daily rated workers are engaged in regular category of posts' they would be paid the scale of the concerned regular workers. Out of 181 workers 120 are receiving wages as per the regular workers' scale from 1-3-96 onwards due this settlement. Though these 120 workers are getting the same scale of pay as the regular workers doing the same job, they will not get all the benefits that of the regular workers. The differences pertain to important service conditions such as earned leave, medical reimbursement, encashment of leave, number of casual leaves, nature of compassionate appointment for their heirs in the event of their death etc. The work of 181 daily rated workers is of continuous and perennial nature. All are working since more than a decade and 131 are for more than two decades. The jobs are regular in character as per presumption as laid down by the Supreme Court. The difference in wage between regular workers placed on a scale of pay and the daily wage workers doing the same job amounts to between Rs.800/- and Rs.1400/- per month. The Respondent adopted recruitment of workers on daily wages and not adopting any policy of periodical regularization depriving workers of the said pay scale and other benefits.

3. In the conciliation proceedings held by the authorities under the I.D. Act in 1997 regarding regularization of these 181 daily wage workers, the Respondent management has taken an adamant stand stating that the Andhra Pradesh (Regulation of Appointments to Public Services, Rationalization of Staff Pattern and Pay Structure) Act, 1994 comes in the way of regularization of the daily wage workers. This stand of the management is recorded in the failure report of the Regional Labour Commissioner (Central), Hyderabad dated 16-4-97, leading to this reference. The said Act 2 of 1994 must be read along with GOMs No.212, Finance & Planning (F.W.P.C.III) Department, dated 22-4-94. The GO says that all daily rated/temporary employees who are in employment as of 25.11.1993 and have put in five years of continuous service are eligible for regularization if they satisfy the conditions laid down therein, notwithstanding Act 2 of 1994. Out of 181 workers, 165 were appointed before 25-11-1988 and as such the GOMs No.212 directly applies to them. As the text of the said GO indicates, its terms are none other than the criteria for regularization laid down by a three Judges bench of the Supreme Court in State of Haryana Vs. Piara Singh (C.A. No.2979/1992, reported in 1993 II LLJ 937). As per this Judgement the workers who satisfy said criteria be regularized.

4. In the conciliation meeting held on 24-2-1996 it was agreed that the management would appoint a committee to study scientifically the man power requirements of the Corporation, and that a proposal on the basis of it's report would be sent to the Government seeking permission for regularization of the workers. A committee was appointed and submitted a report. It was intended to provide an excuse to the management for not regularizing the services of the 181 workers by saying that there is no sufficient manpower requirement. In the final conciliation meeting on 3rd and 4th March, 1997 the Petitioner Union rejected the report, because the said committee did not take into account the fact that far from the daily wage workers being surplus, the management found them insufficient and in fact employing about 150 contract labour on the same jobs in addition to the daily wage workers. When workers are employed for a decade or more continuously management cannot say there is no regular work for them. Hence, it is prayed to direct the Respondent for retrospective regularization of the 181 workers from the date on which they complete one year of daily wage service, and payment of arrears as well as future regular pay scale.

5. The Respondent filed counter stating that this Tribunal cannot take up this dispute as per Sec.7A of the A.P. (Regulation of Appointments to Public Service and Rationalization of Staff Pattern and Pay Structure) (Amendment) Act, 1998. That removal of over burden and barites ore and transport thereof are given on contract by the Respondent. The persons mentioned in the dispute assist the employees in certain works incidental to the removal of over burden and the ore by the contractor.

6. The Respondent appoints suitable persons on regular basis to unskilled category on daily wage and confirm as permanent workmen as per Sec. 2(2) of the Certified Standing Orders. Many of the workmen recruited were promoted to higher category like semi skilled and skilled. In the year 1989, 87 skilled work person, whose services were found necessary were absorbed as employees under Corporations Rules in regular post and scales of pay w.e.f. 1.4.1989 in the posts called Mate Gr.II, Driller, Blaster, Pump operator, Compressor Operator, Generator Operator Gr. II, Mill Operator Gr. II, Survey Asst/ helper, Welder/Fitter, Mechanical Helper, First aid attender, Wagon drill operator, Switch board operator, Driver, Jr. Assistant Gr. III vide order No.APMDC/I&PR dated 7-9-1989 and 23-9-89 and 19.12.89. When excavation of barites ore manually was discontinued and mechanized in October, 1990, the services of 114 piece rate workers and services of 13 employees who were absorbed in the year 1989 were found surplus. The surplus work persons and employees were not retrenched but they were deployed at

different places of work even though there was no need for such deployment because the management considered that the workers/employees should not be thrown into indigent and depressed economic and social conditions. They have been helping regular employee. There were 195 employees in the year 1997 out of which 18 were in the managerial and supervisory cadre, 12 were recruited through employment exchange/open advertisement, 54 were transferred from the branches which were closed as such. They were anyway accommodated without retrenching them.

7. The contention in the claim statement that the Respondent has no reasonable or rational policy of regularization and hence regularization of 181 daily rated persons is pending from 1989 is misconceived and alleged for the purpose of present dispute. The contention that the different batches of workers have been regularized upon putting different number of years and that some of workers in 181 daily rated persons who are the present case have put in more years of service than regularized employees is misconceived. The memorandum of settlement was entered into with A.P.M.C. Workers Union and A.P.M.C. Employees Union on 24-2-1996 and agree to adopt the principle of equal pay for equal work whenever the daily rated workmen are engaged in the regular category of post for such engagement by way of payment of difference of wages. Excavation of barites ore manually was discontinued and mechanized in October, 1990. The services of 114 piece rate workers and service of 13 employees who were absorbed in 1989 such as. Drillers, Blasters, Compressor Operators, Wagon Drill Operator were found surplus. Considering the request of A.P.M.C. Employees Union an understanding was made with A P.M.C. Employees Union on 7-11-89 for deploying the piece rate work persons from mine to plot. The Union agreed that in case there is work available in the plot or mine the piece rated workers can be deployed to other places of work. Even though there is no need for such deployment because the management considered that the workers employed should not be thrown into indigent and depressed economic and social conditions. Hence, they have been helping the regular employees. Thus, the surplus work persons employees were deployed at different work places to help the regular workers. It is also true even after 47 work persons and 16 persons opted for Voluntary Retirement Scheme and relieved at Mangampet branch no recruitment was made. The contention that the workers will not get the benefits of regular workers as long as their services were not regularized is mis-conceived. Further it is not correct that only to deprive the workers of their rights the management is not regularizing is absolutely false. There is no bar in categorizing the employees. The daily rated work persons are not engaged independently in the works which are perennial in nature. But they help the regular employees. The difference is only Rs.300/- per month in the pay various G.Os are there. The Petitioners having agreed for appointment a committee to study the requirements of the Respondent Corporation are not entitled to contend that the report is not scientific.

8. It is submitted that the contract workers are employed at different places where the Respondent Corporation workers are not working such as milling, breaking, manual loading and unloading etc. In view of the new industrial policy of A.P., 1995 the role of, the Corporation is limited to that of holder of Mining lease and watch dog function in the entire operation. Hence, development of mines by its own is therefore put to an end and scope for further recruitment is bleak. The Voluntary Retirement Scheme for daily rated work persons is still kept open whereas Voluntary Retirement Scheme for employees is kept up to 31-3-2001 with a view to reduce surplusage of work persons and employees. The contention of the Petitioner that the workers are entitled for regularization is not maintainable and is liable to be dismissed with costs.

9. Sri D.R. Srinivasa Rao, Junior Assistant with the Respondent, General Secretary of the A.P.M.C. Workers Union deposed as WW1. He deposed that the union was formed in 1987. He is the office bearer since the formation of the union. The dispute concerns regularization of 181 daily wage workers. The Government of India has referred the matter after the conciliation proceedings held and failed before the Regional Labour Commissioner(C), Hyderabad. The reference with annexure is Ex.W1. On 5th page of the annexure, first column is name of the worker, second column is date of joining, third column is date of work in present category, fourth column is date of equal pay for work, next column is total service in that category, sixth column is entire service. The other pages also the columns are the same. The fifth page of annexure is Ex.W1 A. There are five unions in the Respondent Company at Mangampet branch. At Mangampet total number of workers as on today are 345 that include daily wagers. Regular workers and the staff about 200 persons their union members at Mangampet. Barytes ores are extracted. The work of drilling, blasting, issue of challans, check post and operating the dewatering pumps, mechanic helpers etc. All the above work is done by both daily wage workers and regular workers. All work is done by both daily wage workers and regular workers. There is no difference of work is done by the daily wage workers and regular workers. All workers are regarded as daily wage workers by the Respondent management. There is no policy of regularization of daily wage workers in the Respondent company. Prior to the confirmation of their union in 1987 some workers were regularized. After the registration of their union on 1-4-89, 87 daily wage workers were absorbed as regular workers. Subsequently their union continued to agitate for regularization of the daily wage workers. The removal of ore was done manually prior to 1990, afterwards it was mechanized. There were 114 workers doing the manual work of extracting ore. These 114 workers were then employed in breaking the ore into pieces and grading the ore, i.e., separating the difference grades of ore

10. After mechanization, the productivity has increased from 3 lakh tons per annum in 1989-90 to 8.8 lakh tons at present. The depth of the mine has increased from 150 feet to 350 feet. The width has also increased from 300 feet to 700 feet. The length of the mine has increased from 400 metres to one kilometre. Earlier the mining was done at 4 levels now it was increased to 17 benches. Previously there were 2 weigh bridges now, there are 10 weigh bridges and 8 are continuously operating. Earlier there were only two power generators, now there are 8 power generators. Earlier there were four or five pumps for dewatering mines, now there are 16 pumps two levels. Due to increased production the work of electricians, sampling and lab analysis has also increased. However, from 1990 to this date inspite of increased work as stated above no fresh recruitment of workers is taken place. On the other hand up to 70 workers have retired in the last ten years.

11. They raised a dispute of regularization and there was a settlement before Regional Labour Commissioner(C), Hyderabad which is Ex.W2 dated 6-9-91. In that settlement regularization was the main issue but there are other issues also. In the settlement of the Management said regarding regularization they were writing for approval. However, they did not regularize even thereafter. They again approached the Regional Labour Commissioner(C) for settling the issue of regularization. Management said that they are yet to receive any reply from the government. Again there was a settlement on 24-2-96 before Regional Labour Commissioner (C) in which the management again said that they are writing to the government. The settlement was Ex.W3 and he deposed the other facts stated in the petition and stated that here is a difference of about Rs.1000 to Rs.1200 of wage between daily rated workers and regular workers. Even those who get equal pay with the regular workers are not kept on par with service conditions with the regular employees like encashment of leave 15 days, regular service etc. The regular employees are given one Earned Leave for 11 working days whereas daily rated workers are given one Earned Leave for 21 days. The regular employees can accumulate 240 days of E.L. whereas temporary employees can accumulate upto 30 days. Similarly, there is discrimination in maternity leave. A medical reimbursement for regular workers is Rs.2500 to Rs.50000 and for daily wagers only Rs.500. Regular employees avail the facility of LTC etc. They continued their efforts for regularization which ended in failure in 1997 before the Regional Labour Commissioner(C) which is Ex.W5. Some 42 workers filed a writ before the Hon'ble High Court and High Court in W.P. No.5055 and 3427 of 1997 and 1999 respectively on 2-4-97 directed the government to consider the matter for reference. Judgement copy is Ex.W6. That they are seeking this as per G.O.M.S. 212 dated 22-4-94 which is Ex.W7. The workers are continuously worked and the work is of perennial in nature and hence, it is prayed that they should all be made regular employees, get the wages on par with regular employees.

12. In the cross-examination he deposed that there was an agreement between the union and the Management on 1-4-89 and 139 daily rated workers were absorbed as regular workers out of those 139 daily workers 87 were absorbed in Mangampet. Mechanization of the mines took place in the year 1990 prior to mechanization there were 114 piece rated daily workers at Mangampet. All the 114 workers were shifted to plot for sorting. There was no agreement between the workers and the Management for shifting the 114 piece rated workers from Mines to the plot. 120 workers out of the total claimants are being paid equal pay for equal work since 1-3-96. The total number of claimants in the present reference are 183 out of 183, 10 persons died, 30 workers retired and 143 piece rated workers are still working. From out of these 143 workers, 59 are former piece rated workers. None of these 59 piece rated workers who have been shifted to the plot are presently working on the sorting job and shifted to various other categories. He does not know how many workers retired out of 87 workers absorbed as regular workers in pursuance of the agreement dated 1-4-89. There are four pump stations. There were totally 13 pump operators out of 87 regularized. Some of them retired and how many he does not know. He does not know how many mechanical helpers are there from out of 87 employees regularized. There are nine workmen from out of 59 earlier piece rated workers are working as pump operators. He does not know from out of 183 how many are working as pump operators. Four mechanic workers from out of 59 are working at present. Out of 183 claimants 12 are working as pump operators. Similarly mechanic helpers are 17. The Corporation has closed it's Asbestos mines. The regular employees of the closed Asbestos mines are presently working at Mangampet of Visakhapatnam. He does not know how many workers from Asbestos mines are working at Visakhapatnam. He does not know the total employees working at Visakhapatnam.

13. The sorting and grading work of the plot is being done by the contractors. Only for removal of overburden and ore only tenders are called for and not for milling. All the claimants are being given the benefits of the Standing Orders of the Corporation. 120 people are being given equal pay for equal work from out 143 employees. The benefits under the Mines Act are being extended to all the workers similarly, provident fund, bonus, gratuity, maternity benefit etc. He does not know whether there is a bilateral agreement dated 7-11-89 between the union and the Corporation. After mechanization there was no sorting of ore work at plot and it was being done at mines only. The Corporation retrenched workmen after closing Dwaraka Tirumala , Shad Nagar and Donthapalli and V. Pally. There was an agreement entered into between the union and the Corporation vide Ex.W3 on 24-2-96. It is mentioned in that a man power committee will be appointed within three months but he does not know whether such committee was appointed or not. All the claimants are permanent daily wages employees. When the workers were recruited, no minimum qualification was

insisted for. It is correct that Ex.W4 was sent by Project Manager, addressed to the Chief Administration Officer, APMDC and the Management submitted the same before the Regional Labour Commissioner(C). It is not true to suggest that there are 123 surplus workers but Management has not retrenched them out of sympathy. He denied that the work is not of regular nature and that the difference between the wages is only Rs.300. He also denied that the workers are unskilled and surplus and cannot be regularized. It is also not correct that they have tried their luck at High Court and having failed in the writ petitions, approached this Court.

14. The Petitioner examined Sri S. Yanadaiah, Check Point assistant, Barytes Mines, Mangampet as WW2 and he deposed that he joined at the Barytes mines, Mangampet in the year 1997 as a piece rate worker. After the drilling and blasting of the ore in the mines the piece workers did the job of breaking of the ore into pieces and sorting and grading the ore. There are three grades of the ore. The piece rated workers working in the mine went on till the year 1991. By the time in 1991 there were 114 piece rate workers. He practically repeated the same contentions as stated in the petition. In the cross examination he deposed that almost the same as WW1.

15. The Management examined Project Manager Sri H.D. Nagaraja as MW1 who filed affidavit in which he deposed that the main mining work of removal of overburden (waste) and removal of Barytes Ore are being done by the contractor. The transport of overburden and ore is also included in the contract, due to which the requirement of work persons is minimized to a large extent. The Petitioners are being utilized for certain works. He deposed the same facts mentioned in the counter of the Respondent and he deposed that the daily wage persons cannot be equated with the permanent staff members. The employment of work persons on daily rated and staff members on monthly rated are under different set of rules and therefore benefits are different. The Petitioners have not complied with the required terms mentioned in the G.O.M.S. No. 212 for regularization. As such they cannot claim relief under the said G.O. for regularization of any workmen and the Respondent Corporation needs the approval of the Government. Copy of certified Standing Orders is Ex.M1 and Copy of common Judgement in W.P. No.5005/97 and W.P.No. 3427/1999 is Ex. M2. Hence, the Petitioners are not entitled to any relief and the I.D. is liable to be dismissed in the interest of justice.

16. In the cross examination he deposed that in the year 1990 when the mechanization of excavation too place there were 413 workmen including daily rated workers. Now, the work force is 337 Ex. M1 is the Standing Orders pertaining to daily wage workers. If a person works for three months continuously as daily wage worker he is called a permanent daily wage worker and continues to so. They do not have a policy of necessarily regularizing daily rated workers. That Ex. M3 is the service rule for regular employees. The regular workmen doing the same work as the daily rated workers are governed Ex. M3. Daily rated workers do not have any statutory responsibilities. The daily rated workers and regular workers are working as electrical assistants. Same is the case of weigh bridge operators, pump operators, loading and unloading assistants, watch and ward, Mechanical helpers. In any shift the work done by the daily rated workman and regular workman is same, their responsibilities are same. He practically agreed about the difference in service conditions of regular workmen and temporary workmen. In the year 1996, 120 daily rated workmen have been given equal pay on par with regular employees and also annual increment and the same difference is maintained. Piece rate workmen who were doing earlier in plot to do the work of breaking and grading the ore. These workers have shifted to other work in the mine. It is true that they have been given the duties which have been arisen due to expansion of the project. The difference between the daily rated worker and regular worker is Rs.300 to Rs.400 per month. The annual increment of the daily wage worker Rs. 9.10 ps annum whereas the regular wage workman's is Rs.60 to 80 per annum. The regular workman has group gratuity insurance scheme whereas daily rated workman won't have.

17. It is argued by the Learned Counsel for the Petitioner that there was ample increase in work to absorb the workers who may have become surplus and the specific suggestion to this fact is accepted by MW1. He has agreed that they have been given the duties which have arisen due to expansion of the project. Thus the plea of surplus workers permitted to assess the regular workman out of sympathy is falsified by MW1's statement itself. It has also been clearly established that the daily rated workers are doing the same work and render same responsibilities as the regular workman. In fact, MW1 accepted the same in clear terms. It may also be noted by the Hon'ble Tribunal that nowhere it is mentioned either in the pleadings or in the evidence of MW1 that the workmen who have been regularized are more highly qualified than those who have not been done. It is not shown that the difference of wages is due to superior qualification. MW1 only says that it is only due to different sets of rules. It is not denied that to these regular workmen who were all originally daily wages workers and it is the case of the Management as stated in para '9' of their written statement that all of them are recruited without insisting on any qualification thus by their own admission there is no rationale for the differentiation in wages or service benefits admissible to the daily wage and regular workmen except that they are governed by different service rules. It is respectfully submitted that such a reason is untenable and unsustainable.

18. The Management takes two alternate and mutually contradictory pleas. One is that G.O.M.S. No. 212 does not apply to the daily wage workmen because they are not

regular appointees, having been appointed and confirmed as permanent daily wage workers against regular vacancies under certified Standing Orders Ex. M1. The question of their regularization in the sense of G.O.M.S.No. 212 does not arise. On the one hand it is stated that they do not fulfil the conditions in G.O.M.S. No.212 since they are not working against any clear vacancy being surplus workmen continued out of sympathy and engaged only to assist the regular workmen working against sanctioned posts. Thus, two pleas are mutually contradictory.

19. The law is well settled that the Industrial Tribunal will construe the true meaning of an order of reference by looking at the pleadings of the parties and attendant material. The reference itself states that they have been working for 10 years or more. The pleadings as elaborate above show that regularization in the present context means absorption in the category of monthly rated workmen governed by the Corporation Service rules Ex. M3 and admissible to higher service benefits. Thus, it is contended by the Management that the daily rated workmen are working in sanctioned daily wage posts filled up in accordance with the certified Standing Orders Ex. M1 and it is also the case with 120 of the 181 daily rated workers who are getting the benefit of equal pay on the ground that they are doing regular category of work. He further argued that one has to look the back ground on seeing the G.O.M.S.No.212 before they proceed further with the arguments. The said G.O. is an adjunct to Act 2 of 1994 and is now engrafted into that act by virtue of Amendment Act 3 of 1998 (which is further amended in Act 27 of 1998). If the Management now contends that G.O.M.S. No.212 does not apply, then the matter in issue has to be decided by the settled law concerning regularization laid down in a number of Judgements of the Supreme Court. Act 2 of the 1994 was passed by the said legislature that from coming into force of that Act (*i.e.*, from 25-11-99), no casual, daily wage or NMR worker working in Government Departments, Public Corporations, Local bodies etc. will have a right of regularization. In Sec.9 of the Act also says that no Court can pass any order directing regularization of such workers and also pending proceedings in any Court shall abate. The Hon'ble Supreme Court at just about that time in (1993) II LLJ 937 discussed at length the issue of regularization of such workmen and suggested that it would be proper for the respective Governments to frame reasonable schemes for the same comprehending with the said Act may be challenged G.O.M.S. No. 212 was issued giving a right of regularization to daily wage and casual workers who have put in five years of continuous service and wherein service as on 25-11-93, the date on which the Act 2 of 1994 barring regularization came into force. In the amending Act 3 of 1998, Section 7 of the Act 1994 was amended to incorporate a new proviso (thereafter the first proviso) which made by the right granted by G.O.M.S.No. 212 a statutory right. Therefore, the right of regularization has become a statutory right for those who come within the purview of the conditions stipulated in G.O.M.S.No. 212. However, in the Amendment Act 27 in 1998 brought into force on 19-8-98, Section 7A was introduced closing the right to claim regularisation under G.O.M.S.No.212 thereafter and barring any Court or Tribunal from entertaining another case passing any order of regularisation after 19-8-98. So it is the contention of the Management that after the said date *i.e.*, 19-8-98 no claim for regularisation under G.O.M.S. 212 can be entertained by the court. In this case the claim pleaded before 19-8-98 the claim for regularisation was made as far back as 1991 vide Ex. W2. The final failure report from which the present reference arises, was submitted by the Conciliation Officer on 16-4-97 before the cut off date imposed by the amending Act 27 of 1998. Though initially the appropriate Government rejected the reference for the reason that writ petitions filed by the workmen were pending in the High Court, after disposal of the writ petitions and in view of the observations of the High Court in the writ petitions, to reconsider the matter, and made the order of reference, not on the basis of a fresh claim but on the basis of the failure report dated 16-4-97. Therefore it arises before the cut off date, and Section 7A of the Amendment Act 27 of 1998 dated 19-8-98 cannot curtail the powers of rights of these petitioners.

20. Actually, these are not daily wage workmen in the sense of Act 2 of 1994 the very pleadings of the Management and deposition of MW1 shows that these daily wage workers are not daily wage workers in the sense of Section 2 of Act 2 of 1994. For this end, that these workmen were selected and appointed in sanctioned posts under the relevant rules on a regular post. Even though they are paid daily wages and not at time scale. The relevant rules are the certified Standing Orders Ex. M1. Ex. M1 pertains exclusively to daily wage workers and it qualified them as permanent workmen, probationers, badlis or substitutes, temporary workmen, apprentices and casual workmen. These permanent daily wage workmen are contemplated by the very Standing Orders. Once they are described as permanent they can only be deemed to have been appointed against existing posts. It is in the deposition of MW1 that a worker appointed as probationer is made permanent after three months. It is not the case of the Management that this 181 workers are badlis, temporary apprentices or casuals they are admittedly permanent daily wage workmen appointed under the relevant Standing Orders Ex.M1 to the sanctioned posts. For which para 4 of the reply statement or counter may be quoted here. " In reply to the para 6 of the claim statement, the contentions of the Petitioner that the Respondent never had any policy of recruitment of workers on regular basis is false. The Respondent appoints suitable persons on regular basis to unskilled category on daily wage and confirms as permanent worker as per section 2(2) of the Certified Standing Orders. Many of the workmen recruited as above were promoted to higher category like semi-skilled and skilled. The regularisation of the services of workmen

appointed on regular basis and confirmed as permanent under the Industrial Employment (Standing Orders) Act, 1946 does not arise". Even according to the very pleadings of the Management the 181 workers regarding whom the reference has been made are not daily wage workers in the sense of Sec.2(II) of Act of 1994.

21. It was held by the Hon'ble Supreme Court in Delhi Cloth & General Mills Co. *Vs.* their workmen, (1967) I LLJ para 423 page 431 that, " In our opinion the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance, leading to the trouble". The basis of which the Petitioner claims relief is that the daily wage workers and regular workers working in the same job do the same work and carry the same responsibility. There is no difference in their qualification. All were originally appointed as daily wage workers without insisting on any qualifications as admitted by the Management in para 9 of the pleadings. Twice in the past in the year 1982 and 1989 the benefit of absorption into the regular category was given to some of the daily wage workers. It is not the case that after regularisation they moved into higher grade jobs. They were regularized while doing the same job while others doing the same jobs remain daily wage workers. Ex.W4 and Ex.W4A show that in many of the jobs in each shift, both the regularized workers and those who remain daily wage workers are working side by side. That regularisation has not been extended to these persons who have put in more than 13 years of service. That they put in more years of service than those who were regularized in 1989.

22. In the year 1996 under the settlement Ex.W3, 120 of them were identified as being engaged in regular category of post i.e., doing the same work as those who have already been absorbed in the regular category of post. They were given equal pay as regular workers doing the same job but other service benefits remain different, which differences are enumerated in the depositions of WW1 and MW1. This is unjust and unsustainable and the Hon'ble Court may straightway remedy the same without prejudice to the remaining daily wage workers. It is violative of Article 14 and 16 of Constitution of India as held by the Hon'ble Supreme Court in Randhir Singh *Vs.* Union of India, (1982) I LLJ 344. That was a case dealing with unequal pay for equal work but the reasoning applies to unequal service benefits too. So having identified these 120 persons now they cannot say that they are only helping the regular workers. It cannot be pleaded that they do not have regular vacancy to absorb them. It was held by the Hon'ble Supreme Court in State of Haryana *Vs.* Piara Singh, (1993) II LLJ 937 that if a daily wage or casual, workman is continued for several years a presumption would arise that there is need for regular post. This is indeed a view that the courts have consistently taken.

23. Regarding the remaining 61 workers not covered by the settlement Ex.W3 yet Ex.W4 shows that the jobs they are doing are all required for the Corporation. This document which is an internal communication of the Corporation is neither denied by the Management nor do they contend. That the situation change at the time of document prepared. So the remaining 61 workers were also doing that work which is necessary for the Corporation and are not surplus and that is clear from the fact that there has been no fresh recruitment of workers after the single act of mechanization of the year 1990, for the work has expanded manifold. MW1 admits that those piece rate workers rendered surplus have been engaged in the work that has increased due to the expansion of the mining operations and each of them is working from the date indicated against their names in the annexures to the order of reference Ex.W1, which is more than ten years in most cases. Therefore, all the 181 daily rated workers are entitled for absorption in the regular category, since even three years of continuous service has been held to be sufficient to direct regularisation in case of daily rated workers vide (1990) I LLJ 320. They are entitled to be regularized with effect from 1-3-96, the date from which Ex.W3 was given effect to. Even if it is assumed that the 181 workers are daily rated workers for the purpose of Act 2 of 1994, they are entitled for regularisation under G.O.M.S.No. 212 as per the first proviso to Sec.7 of the Act 2 of 1994. Regularisation on the full Bench of the Hon'ble Supreme Court wherein it was held that, "three years of service ignoring short breaks created by Respondent would be sufficient for confirmation. If there is gap of more than 3 months between the period of termination and reappointment that period may be excluded for computing three years period.

24. In Delhi Cloth Mills and General Mills Company Ltd., *Vs.* their workers, the Hon'ble Supreme Court reported in I LLJ page 423 held, " even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner. But fairly and reasonably". Also held, " In our opinion the Tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the Parties were at variance, leading to the trouble". He also relied on 1996 I LLJ page 51 wherein the Full Bench, the Hon'ble Supreme Court held as follows, " Equal pay for equal work is not a mere demagogic slogan. It is a constitutional goal capable of attainment through constitutional rights". It was further held by their Lordships that, "Construing Articles 14 and 16 in the light of Preamble and Article 39 (d), we are of the view that the principle 'equal pay for equal work' is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no

classification or irrational classification though those drawing the different scales of pay do identical work under the same employer".

25. He also relied on the Judgement of Division Bench of Hon'ble High Court of A.P. in 2001 (3) ALT page 366 wherein their Lordships held, "It must also be taken note of the fact that Act 27 of 1998 was given only a prospective effect". They further held, " Act 27 of 1998 has come into force on 19.8.98. Thus the ban which now would be imposed, as regards grant of regularisation will be effective from that date". It was held by the Hon'ble Supreme Court of India in 2001 (1) LLJ page 710 reported in Gujarat Agricultural University Vs. Rathod Labhu Bechar and others held that, "In fact, the Tribunal has held on the date of the Award, most of the workmen had completed 10 years of their service. It is also well settled, if work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularisation for its financial gain as against employees' legitimate claim, has been held by this Court repeatedly as an unfair labour practice". It was further held that, "If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, when they continue to work for year after year, only option to the employer is to regularize them". It was further held by their Lordships, "The consequent corollary is where work is taken not for a short period or limited for a season or where work is not of part time nature and if pattern show work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily-rated workers. In such situation a legal obligation is cast on an employer is there be vacant post to fill it up with such workers in accordance with Rules if any and where necessary by relaxing the qualification, where long experience could be equitable with such qualifications. If no post exists then duty is cast to assess the quantum of such work and create such equivalent post for their absorption". Thus, these 181 workers may be paid on par with regular workers.

26. The main arguments of the Learned Counsel for the Respondent is as per Section 7A of the A.P (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern & Pay Structure) (Amendment) Act, 1998, which reads thus,

" 7A(1). Notwithstanding any Government order, Judgement, decree, or order of any Court, Tribunal or other authority, no person shall claim for regularisation of service under the first proviso to Section 7 as it was incorporated by The Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Amendment) Act, 1998,

(2) No suit or other proceedings shall be maintained or continued in any Court, Tribunal or other authority against the Government or any person or other authority whatsoever for regularisation of services and all such pending proceedings shall abate forthwith.

(3) No Court shall enforce any decree or order directing the Government or any person or other authority whatsoever for regularisation of services".

27. The annexure to the said order contains only 180 daily rated workers they bound by certified Standing Orders. The applicants are admittedly being paid the salaries and other benefits of permanent workmen. The mining of the ore and the removal of the overburden is given on contract by the Management but the rest of the work is not done by the Corporation's work force. It is submitted that milling of Barytes powder, bagging, stacking, transportation, breaking of Barytes ore to the required size part of dewatering operations are also given on contract. Thus, applicants are only aiding the permanent employees.

28. The Respondent corporation used to appoint suitable persons to unskilled category on daily wage and on completion of probation period of 3 months they are classified as permanent workers as per order 2(2) of the certified Standing Orders. Almost all the workmen recruited as above are promoted to higher categories like semi-skilled and skilled, and super skilled on account of nature of work or through automatic advancement schemes. The contention that the Respondent has no rationale or reasonable policy of regularisation of the workers taken into employment as daily wage workers is false. It is submitted that in the year 1989, 141 skilled work persons whose services were found necessary were absorbed as employees under Corporation rules in the posts created and fixed in the scale of pay with effect from 1-4-89.

29. When manual excavation of Barytes ore was discontinued and the same was mechanized in October, 1990, services of 114 piece rate workers and also the services of 13 employees who were absorbed in the year 1989 such as Drillers, Blasters, Compressor Operators, Wagon Drill Operator were found surplus. Considering the request from one of the unions, M/s.APMC Employees Union, an understanding was made that the said union on 7-11-89 for deploying the piece rate work persons from mine to plot and the union agreed that in case no work is available in the plot or in the mine the piece rate workers can be deployed in any work shown to them by the Corporation. The surplus work persons and employees were thus deployed to other places of work. However, the surplus work persons and employees were not retrenched but they were deployed at different places of work. Even though there was no need for such deployment but the Management considered that the workers/employees should not be thrown into indigent and depressed economic and social conditions. Hence, they have been helping regular employees at different places of work.

30. In Ex.W3 settlement the Management agreed to adopt the principle of equal pay for equal work whenever the daily rated workmen are engaged in the regular category of posts. The difference of wages shall mean the difference between the initial basic pay of the pay scale of the respective cadre, dearness allowance, project allowance and medical allowance payable to regular employees with effect from 1-3-96. The same was implemented. It is pertinent to mention that there are no vacant posts, as such they are paid equal pay for equal work only to boost up their morale and they cannot claim regularisation on that plea. The workmen initially accepted to work at any place when facing retrenchment and later on for equal pay and now claiming to be regularized. The entire excavation work is being done through mechanized operations and most of the work is done by the contractors.

31. The Standing Orders have been duly certified by the Regional Labour Commissioner(C). The said certified Standing Orders clearly spelled out, the quantum of leave, holidays and the terms and conditions governing their notification of shift working, availment of leave, holidays, pay days etc. vide S. P. Nos. 5, 6, 9 and 10. the said Standing Orders are exclusively applicable to the workmen employed in Mangampet Mines. Further, these persons are governed under the Mines Act, 1952 and regulations framed there under. Service Rules of the Corporation are applicable to whole time employees of the Corporation. It clearly gives to show that the Corporation treated the workmen employed in various mines from the office/clerical/sub-ordinate staff and officers. Thus, it cannot be termed as unreasonable discrimination. Therefore, the corporation has formed different set of rules and regulations. Certified Standing Orders for workmen employed in mines and service rules for the office staff. They constitute different cadres.

32. A striking illustration in the long term settlement arrived between the Management and different unions in the course of proceedings under Sec.12 (3) of the I.D. Act are only applicable to the employees in the mines and not to the clerical and other staff. The case law on this subject is very clear. In Alembic Chemical Works Co. Ltd, Vs. Workmen, (AIR 1961 SC 647), the Hon'ble Supreme Court held, "Industrial adjudication has always been making a distinction between operatives and clerical staff in various matter relating to the conditions of their service and the distinction is perfectly justified in view of the difference in the nature of their work. That being so, it could not be said that the award suffered from the vice of discrimination merely because its application was confined to the clerical staff only and the benefit was not extended to the operatives". Similarly, in Clerks of Calcutta Tramways case (AIR 1957 SC 78), where the dearness allowance for clerical staff was fixed at a slightly higher level than the other workmen of the company, it was held that fixation of differential rates of dearness allowance was perfectly in order. Also see Jardine Handerson Ltd., Vs. their employees (1961 - LLJ 641 SC), which involves a similar case relating to the subordinate staff. In the light of the above, the Corporation is under no obligation, whatsoever, to treat the work persons on par with the clerical/office/ other employees. The applicants even otherwise are surplus employees who cannot claim to be regularized only because the Corporation has taken a sympathetic view of continuing them.

33. Ex.W4 is an internal communication addressed to the Chief Administrative Officer by the Project Manager. It is not an assessment of the manpower required. It is different for the Mines Manager to assess the manpower because it requires number of parameters such as degree of skill, strain of work, experience involved, training required, responsibility undertaken, agreeableness to task, hazard of work, fatigue involved and mental and physical reasons. Without considering the above proposal the Corporation constituted a committee consisting of Deputy Chief Industrial Engineer of M/s. Singareni Collieries Co. Ltd., one Management Consultant and the Executive Director of the Corporation to study in depth to determine the proper strength required by the Corporation. The report of the committee was further scrutinized by the committee consisting of Functional Heads of Head Office and Project Managers of Branch Offices in which Branch Manager, Mangampet was also one of the members of the committee. Hence, the contention of the Petitioner's Counsel to take into account the said letter is baseless. Further, MW1 at para 4 deposed that the daily rated workers do not have any statutory responsibilities as many posts in the mine are statutory under the Mines Act, 1952 and Metalliferious Mines Regulations, 1961. The contention of the Management witness that the daily rated workers have been given the duties which have arisen due to expansion of the project is wrong. As already stated Act 2 of 1994 and as per Sec.7A of the A.P. Act they are not entitled to agitate the matter. Further G.O.M.S.212 dated 22-4-94 lays down the following conditions :

(a) The persons appointed should possess the qualifications prescribed as per rules in force as on date from which his/her services have to be regularized.

(b) They should be within the age limits as on the date of appointment as NMR/daily wage employee.

(c) The rule of reservation wherever applicable will be followed and back-log will be set-off against future vacancies.

(d) Sponsoring of candidates from Employment Exchange is relaxed.

(e) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the

vacancies already notified to the Andhra Pradesh Public Service Commission/District Selection Committee.

(f) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on the Workcharged is at fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments. District Offices provided there are clear vacancies of last Grade. service.

34. As far as regularisation is concerned it is different from State Government to Corporation. The daily rated work persons employed in the Corporation will be considered as permanent work persons after completion of three months probation under the Industrial Employment (Standing Orders) Act 1946 and the Certified Standing Orders made there under. Moreover, the Chapter-V of the Industrial Disputes Act, 1947 confers legal rights regarding lay off, retrenchment, closure, re-employment etc., in respect of work persons which rights are not available to most of the employees recruited under Service Rules of the Corporation. Even in Government, the important condition for regularisation is against clear vacancies of posts considered necessary to be continued as per work load.

35. It is further submitted that the Hon'ble High Court in WP No.5005 of 1997 and 3427 of 1999 while disposing them off on 24-1-2000 directed the authorities to consider the request of the Petitioner for reference of the industrial dispute as and when they seek such reference, without being influenced by the order of the Government of India dated 29-1-98, wherein the Government of India ordered that as, "it is reported that the matter is pending before the Hon'ble High Court of Andhra Pradesh for consideration on writ petition No.5005 of 1997". In fact, the Hon'ble High Court in It is true to say that Judgement dated 24-1-2000 while disposing the above said writ petition in a common order observed, "it maybe noted that the concept of temporary or regular workmen is alien to the Industrial Disputes Act. All the industrial workers are treated alike under the Act. For those industrial workers, who have completed their service continuously for 240 days, additional benefits are conferred under Chapter-V. The Respondents cannot differentiate between their so called regular employees and writ petitioners for the purpose of payment of wages and their benefits. This position is not disputed by the Petitioner's Counsel and also by the Learned Advocate General who appeared for the Respondents. In this view of the matter, the Petitioner's claim for regularisation is misconceived. If they are not given any of the benefits which they are entitled to under several acts, it is always open for them to approach the appropriate forum". The Hon'ble High Court categorically held that as claimants claim for regularisation is misconceived.

36. Further, even WW1 admitted before this Court and also in the WP that they are paid equal pay for equal work. Adopting of principle of equal pay for equal work as per Memorandum of settlement dated 24-2-1996 is being adhered to. If the contention of the Petitioner's Counsel is true the union should have proceeded legally against the Corporation for breach of settlement. WW1 and WW2 admit that after mechanization was introduced the same piece rated workers were shifted to mine to plot for breaking the ore and sorting and they are presently working in different places. Further due to mechanization it was not necessary to go for fresh recruitment although 47 work persons and 16 employees were relieved under the Voluntary Retirement Scheme at Mangampeta Project, no recruitment was made. In fact the workers although were found surplus as far as back 1990 are still being continued. Had they been retrenched in the year 1990 itself this I D would not have been arisen. The work persons absorbed in the regular category are only skilled category and some of them possess technical qualification and statutory certificates of work as blaster, mine mate, driver, winding engine operator, welder/fitter, blacksmith, carpenter, first-aid attender etc. The basis for the difference in wages is always the post but not the superior qualification. Hence, the I D may be dismissed.

37. It may be noted that Sri D.R.Srinivasa Rao, General Secretary of the A.P.M.C. Workers Union who examined himself as WW1 deposed that he is the Secretary of the said union since 1995 and the union was formed in 1987. Ex.W1 shows the date of joining, the date of working in that category, date of equal pay for equal work, total service in the said category. That at Mangampet, total number of workers as on today are 345 that include daily wagers, regular workers and the staff. That the work of drilling, blasting, issue of challans, etc. is done by daily wage workers and regular wage workers. That there is no policy of regularisation of daily wage workers in the Respondent Company. That after the union was formed some workers were regularized. That the removal of ore was done manually prior to 1990 and now it has been mechanized. That they raised a dispute of regularisation and there was a settlement before Regional Labour Commissioner(C), Hyderabad which is dated 6-9-91 and marked as Ex.W2. Again there was a settlement Ex.W3 on 24-2-96. It may be seen that there was a conciliation meeting on 3rd and 4th March, 1997 also before Regional Labour Commissioner(C), Hyderabad, where it was stated that there is long demand of regularisation of their services and he advised to concede the justified demand of the union and the Management was not agreeable to the Union's demand in view of the ban on appointments (Regularisation of Appointments to public services and

Rationalisation of Staff Pattern and Pay structures) Act, 1994. Ultimately on 16-4-97 a failure of conciliation report was submitted stating that the Management is not willing. It may be noted that the Hon'ble High Court of A.P. vide its Judgement in W.A. No.374/2001 and reported in 2001 (3) ALT page 366, Division Bench held that, while considering G.O.M.S. 212 dated 22-4-94 that Act 27 of 1998 was given only a prospective effect. Their lordships held, "the interpretation of G.O.M.S. 212, thus held the field till the afore mentioned Act 27 of 1998 came into force." The Hon'ble Supreme Court reported in, LLJ 1990 page 320 held while discussing a question of daily rated workman but since regularisation of their employment and payment of equal wages to the regularly appointed persons doing same duty held that these Petitioners are entitled to equal pay on par with persons appointed in regular positions... and are entitled the scale of pay and all allowances revised from time to time".

38. He also relied on the judgements reported in 2 LLJ 1993 page 937 at page 957 their Lordships observed, "If a casual labourer is continued for a fairly long spell-say two or three years-a presumption may arise that there is regular need for his services". In such a situation it becomes obligatory for the concerned authorities to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with sympathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job". So it may be seen that these persons have worked from five to 23 years. MW1 only says that mechanization is done and his main contention in the affidavit sworn in before this Court is that these persons are entitled for all statutory benefits such as PF, Gratuity, Bonus, Maternity Leave etc. along with permanent members and more over he relies on the High Court Judgement where his Lordship has made an observation, "In view of the matter, the Petitioner's claim for regularisation is mis-conceived". Further his Lordship in the end stated that the Writ Petition is disposed off with a direction that the authorities shall consider the request of the Petitioner for reference of an industrial dispute as and when the Petitioners seek such reference without being influenced by the aforesaid order dated 29-1-1998.

39. It may be seen that no doubt the Hon'ble Judge observes that there is no difference between temporary and regular employees, once they have put in 240 days of service and that the claim for regularisation is misconceived. Hon'ble Judge was sitting in writ jurisdiction and this being a court of fact it has to deal in detail when a reference has been made to it. Hence, the Judgement in the writ does not amount to res judicata. In fact. His Lordship has directed to refer the matter as industrial dispute and therefore this Court can draw it's own conclusions.

40. I am to state that continuing a person endlessly as we find from this list that there are certain persons who are working even from 1977 and although apparently it may not make any difference in the safeties provided to the workers whether temporary or permanent, but one can imagine the anxiety of the person having worked for more than 25 years, yet, he cannot call himself a regular employee of the company. What an amount of mental torture one has to go, one has to see the society at large. It is not U.S.A. where there is hire and fire policy, here in India the jobs are very very scarce and the society looks down (they ought not to, but it is) upon the person who is a daily wage earner. He does not have the mental satisfaction to give his best to the factory or the company for which he works and not only that the Hon'ble Supreme Court in 1990 LLJ page 320 at page 322 have held, "Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the Respondent, in the circumstances, would be sufficient for confirmation... Since the Petitioners before us satisfied the requirement of three years of service as calculated above, we direct that 40 of the senior most workmen should be regularized with immediate effect and the remaining 118 Petitioners should be regularized in a phased manner". So in view of the Judgement of the Hon'ble Supreme Court and the very admission by MW1- "does not say anything", itself says that they are not entitled for regularisation. It maybe seen that in fact under 5th Schedule of the I.D. Act, Unfair Labour Practices No. 10, "To employ workmen as 'badlis', casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen", itself is an unfair labour practice. In fact, Sec.2 (ra) states, badli workers for areas denying permanency despite existence of permanent work is unfair labour practice and also denial to life and livelihood and dignity. So it may be seen that these people who have been toiling some of them since 1977 are yet called as daily rated workers. One does not only has to live but live with dignity. The Act may provide all reliefs to even those who have completed 240 days of work but, it is a question of social stigma attached to the description of daily rated workers. Not only that as I have stated above it is an unfair labour practice and the Act of 1994 and 1998 Amendment Act can be just ignored for the purpose because this is pending since 1996, 1997, reference could not be made because of the writ pending which was decided in the year 2000. It is the writ of 1997 and 1999. Even if it is taken for granted that one of the writ is of 199 yet the Amendment Act 27 of 1998 is prospective and not retrospective as held by the Hon'ble High Court of A.P. in 2001 (3) ALT page 366 Division Bench Judgement. The

Hon'ble Supreme Court observed in 2001 (1) LLJ page 711 at page 719 para 28 their Lordships held, "we feel that daily rated workers who have been working on the aforesaid posts for such a long number of years without complaint on these posts is a ground by itself for the relaxation of the aforesaid eligibility condition". Their Lordships further observed at para 30, "Thus in view of their long experience on the fact of this case and for the concerned posts the prescribed qualification, if any, should not come in the way of their regularisation". More over, while I was working as a Presiding Officer, Industrial Tribunal-1, Hyderabad I decided a case against Hindustan Petroleum corporation Limited directing for regularisation and equal pay from date of award which was upheld by the Hon'ble High Court of A.P. in the Writ Appeal reported in 2002(4) LLN page 893, it was held that, "So far as regularisation is concerned it is upheld, but equal pay was not allowed on the ground that there was no reference. But regularisation was upheld".

41. Hence, in the result, I hold that the action of the Management of A.P.M.D.C.Ltd., in not regularizing services of 181 daily rated workmen is not justified and they are directed to regularize all of them on or before 31st December, 2004 if not at a time atleast in a phased manner. So far as the pay is concerned, 121 workers are already receiving equal pay for equal work and if the other 61 workers are not receiving equal pay for equal work they will also be entitled for equal pay on par with regular employees in future if they are doing the same work. The question of other benefits like medical reimbursement etc. will automatically be conferred on them once they are regularized. Hence, no direction is necessary on that part. Reference answered accordingly. Award passed Transmit.

Dictated to Kum. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 3rd day of October, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner:	Witnesses examined for the Respondent:
WW 1 : Sri D. R. Srinivasa Rao	MW 1 : Sri H. D. Nataraja
WW 2 : Sri S. Yanadaiah	

Documents marked for the Petitioner

EX.WI :	Copy of listed particulars of workers.
Ex.WIA :	Copy of 5th page of Ex. WI
Ex.W2 :	Copy of settlement dt.7.9.91
Ex.W3 :	Copy of settlement dt.24.2.96
Ex.W4 :	Copy of Management's document showing shift wise manpower requirement dt. 18.11.95
Ex.W4A :	Typed copy of the list of Ex.W4
Ex.W5 :	Copy of failure of conciliation report dt. 16-4-97
Ex.W6 :	Copy of order in WP No.5005/1997
Ex.W7 :	Copy of G.O.M.S. No. 212 dt.22-4-94

Documents marked for the Respondent

EX.M I :	Copy of standing orders pertains to daily wagers
Ex.M 2 :	Copy of order in WP No.5005/1997
Ex.M3 :	Copy of service rules of the corporation.

नई दिल्ली, 14 नवम्बर, 2003

का.आ. 3389.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 1/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल.-20012/425/99-आई. आर. (सी-I)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 14th November, 2003

S.O. 3389.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 1/2000) of the Central Government Industrial Tribunal/Labour Court, II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Tisco and their workman, which was received by the Central Government on 12-11-2003.

[No. L-20012/425/99-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT : SHRI B. BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 1/2000

PARTIES: Employers in relation to the management of Tata Iron and Steel Co. Ltd. and their workman.

APPEARANCES:

On behalf of the workman :	Mr. U.P. Sinha, Advocate.
On behalf of the employers:	Mr. D.K. Verma, Advocate
State : Jharkhand	Industry : Coal

Dated, Dhanbad, the 31st October, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the power conferred on them under Section 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/425/99-IR(C-I), dated, the 20th January, 2000.

SCHEDULE

"Kya Tisco ke prabandhantantra dwara Shri Ashutosh Prasad Sinha key dinank 8-3-97 sey karya sey hataya jana vidibat, Nayasangat evam uchit hai ? Yadi nahi to karmkar kis rahat key patra hai ?"

2. The case of the concerned workman according to the Written Statement submitted by him in brief is as follows:—

The concerned workman submitted that he had been working continuously and regularly at Town Maintenance department of Tisco's Collieries at Bhelatand Sijua Group with effect from 30-5-94 as Senior Overseer as designated by the management with full satisfaction of all concern till he has been arbitrarily and illegally stopped from working with effect from 9-3-93 without any notice or notice pay or retrenchment benefits. He submitted that the nature of job which he performed was permanent, regular and perennial in nature. He disclosed further that from 30-5-94 to 8-3-97 he worked under the management without any break in the service at one single place. He alleged that such stoppage/ termination of his service by the management was in utter violation of the provision of Section 25 of the Industrial Disputes Act, 1947. He further alleged that such action which the management took against him was not only illegal arbitrary but also it was an utter violation of the principles of natural justice as no chargesheet or show cause was served to him before such stoppage/termination of his service. He submitted that the management from time to time issued letters of appointment to him for a period of 6 months and thereafter for a period 3 months without break in service. He alleged that such time to time issuance of appointment letters to him by the management was with the intention to deprive him from getting the benefit of regular and permanent employment. He alleged that such breaks of issuing artificial break was a clear case of unfair labour practice by the management. He further alleged that management stopped/terminated him from his service as because he approached the management for and regularising him in service. After stoppage/termination of service he approached the management with prayer for his reinstatement but to no effect and for which he was compelled to raise an industrial dispute for conciliation which resulted reference to this Tribunal for adjudication. Accordingly he submitted his prayer to pass as Award with direction to the management to reinstate him in service and setting aside the said order or termination with full back wages and other consequential reliefs with retrospective effect.

3. Management on the contrary after filing Written statement-cum-rejoinder have denied all the claims and allegations which the concerned workman asserted in his Written statement. Management submitted that the concerned workman had worked for some time at Bhelatand colliery as Temporary Senior Overseer and was in Technical and Supervisory Grade-A. He performed the duties of supervision and held senior most supervisory post in Civil Engineering side and received the salary and allowances for more than 1600 P.M. During the tenure of his service and accordingly at no point of time he is workman as per the provision of Section 2(S) of the I.D. Act, 1947. They submitted that in view of this position the concerned workman was debarred from raising any industrial dispute to get his relief. They submitted that the concerned workman was provided temporary employment for the first time and by letter dt. 21-3/5-4-94 for a period of 6 months. Subsequently he was given a fresh appointment for another period of 6 months and simultaneously he was again offered temporary employment for another period of 6 months and thereafter he was offered employment for 3 months on two occasions and 2 months for one occasion. His last appointment as temporary Sr. Overseer was from 9-1-97 and after completion of 2 months period as per stipulated terms and condition of that employment his contract of employment was no longer renewed and automatically he could not get any employment further under the company. They submitted that in the year 1994 management felt the need for undertaking a project work to ensure prevention of irruption of fire as well as controlling the same by carrying various civil construction job including blanketing with earth and sand and in that process one extra Sr. Supervisor on Civil Engineering side was required to superwise the job as well as to prepare and verify the bills of the contractor etc. Management was already having Senior Overseer and other staff having experience of handling such job as well as looking up the day to day maintenance job of the colliery buildings. The management wanted to have one extra hand for the purpose of looking after civil construction repairing of maintenance job in respect of bungalows quarters, Dhowras etc. so that the permanent Sr. Overseer could be adopted on the fire project in view of the past experience passed by him. They disclosed that after engagement as temporary Senior Overseer (Civil) the concerned workman was given the job of supervision repairing and maintenance of Bungalow and quarters dhowras as well as other matters connected with town administration department. They submitted that when any new person is recruited afresh as temporary Civil Overseer or Sr. Overseer he is given the job of supervision of construction of buildings repairing and repairing of buildings and other maintenance of jobs as such jobs are common and newly recruited supervisor can supervise such jobs on the basis of his past knowledge and experience. They submitted that as the work on the fire

project was over there was no scope for further engagement of any temporary Senior Supervisor of supervisor and for which they did not renew the contract of employment of the concerned workman after 9-3-97. They submitted that they acted with all bonafide for providing employment to the concerned workman considering his qualification of Graduate engineering (Civil) but as civil work involved in Coal Mines is limited it is difficult to provide permanent employment to large number of civil engineers in coal mines. Accordingly they submitted that they did not commit any illegality nor took arbitrary decision in not renewing the contract of employment of the concerned person due to non-availability of job and as they are facing surplus man power in the establishment. Accordingly they submitted that the concerned workman is not entitled to get any relief according to his prayer.

4. The points to be decided in this reference are :—

"Kya Tisco ke Prabandhantantra dwara Shri Ashutosh Prasad Sinha key dinank 8-3-97 sey karya sey hataya jana vidibat, nayasangat evam uchit hai ? Yadi nahi to karamkar kis rajat key patra hai ?"

Finding with Reasons

5. It transpires from the record that the concerned workman in order to substantiate his claim examined himself as witness in the instant case. The management also in order to substantiate their claim examined one witness as MW-1. Considering the evidence of both sides and also considering all materials on record I find no dispute to hold that the qualification of the concerned workman was B.E. (Civil). I also find no dispute to hold that the concerned workman with reference to his application and subsequent interview held in the office of the management on 15-3-94 was selected and appointed as temporary Senior Civil Overseer for a period of 6 months on fulfillment of terms and condition given in the appointment letter marked as Ext. W-1. WW-1 i.e. the concerned workman during his evidence disclosed that he was posted at Town Maintenance department Sijua Group by the management. He submitted that after completion of said 6 months of service his service was time to time renewed and thereafter the management stopped his from work with effect from 9-3-97. MW-1 also in course of his evidence admitted the fact of renewal of service of the concerned workman time to time. MW-1 disclosed in his evidence that management time to time renewed his service and ultimately they did not renew his further service as there was no sufficient work to be supervised by him. Appointment letters marked as Ext. W-1/1 to W-1/5 speaks clearly that the services of the concerned workman was renewed time to time till 9-3-97 and all such renewal of service made to the concerned workman in reference to the previous renewal order issued in his favour. It is further seen that he was appointed as temporary Sr. Overseer (Civil) initially for a period of 6 months though it is clear that his service was continuous for the period from 5-4-94 to 9-3-97 The concerned workman in support of this claim submitted his salary slip marked as Ext. W-2 to W-2/33. If these pay slips are considered it will expose clearly that the concerned workman worked continuously under the management in the post of Civil Overseer from the date of his appointment at Town Maintenance department Sijua Group by the management. The concerned workman in course of his evidence disclosed categorically that his service was continuous and he completed for more than 240 days service in each year from the date of his appointment. He also received wages from the management as per NCWA in the matter of payment of salary in compliance to the provision of NCWA to which management did not raise any dispute. Therefore, it has to be taken into consideration that the concerned workman received his wages complying with the provision of NCWA. It is the specific allegation of the concerned workman that the management stopped him from his service with effect from 9-3-97 without giving any notice or without paying any compensation as provision laid down under Section 25F of the I.D. Act, 1947. Considering evidence of both sides I have failed to find out an iota of evidence on the part of the management relying on which it can be said that due notice was given to the concerned workman before termination of service. MW-1 in course of evidence disclosed that the concerned workman's service was not renewed further as there was no sufficient work to be supervised by him. The concerned workman during his evidence disclosed that he used to work under the control of the Manager maintenance department and as part of job he used to prepare estimate of the maintenance of the quarters bunglows repairing renovation etc. The manager under whom he used to work used to allot him duties to perform As the part of his duty he used to take measurement of the work done by the workers in connection with the construction work. He also used to maintain the requisition and also used to prepare requisition register. As part of his duty he would also prepare bill and the management book. He also used to maintain register for the civil works done in the bungalow and quarters. Considering the evidence of MW-1 and also considering the facts disclosed in the pleadings of the management I find no dispute to hold that the concerned workman was entrusted to supervise work of the contractors for looking day to day construction repairing maintenance of the colliery buildings, quarters, dhowras etc. The concerned workman during his evidence categorically submitted that the nature of work which he had to undertake was permanent and perennial in nature. It is admitted fact that the management had different bunglows, quarters and dhowras for the workman as well as for the officers, part from other civil work. Therefore, there is reason to believe that repairing work or maintenance work cannot be said to be absolutely temporary in nature. So long the buildings are in existence such works are definitely to be carried on for proper maintenance of the same. Accordingly onus is on the

part of the management to establish that there was no sufficient work to be supervised by the concerned workman under the Civil Department. Management in their pleading took a plea that in the year 1994 and they felt that the need for undertaking project work to ensure prevention of irruption of fire as well as controlling the same by carrying various civil construction jobs including blanketing with earth and sand in that process one extra Senior supervisor, Civil Engineering was required to supervise the job as well as to prepare the bills of the contractors etc. They disclosed that they have their Senior Overseer and other staff having experience of handling such job for looking after the maintenance job of the colliery buildings. Management wanted to have an extra hand for looking after repairing of bunglows, quarters etc. so that permanent Senior Overseer could be deputed in view of the past experience possessed by them. It is their contention that after completion of Fire Project the said Overseer who was deputed there was reverted back to his original post. In course of evidence of MW-1. I do not find any whisper or corroboration in this regard. Facts disclosed in the pleadings cannot be considered as substantive piece of evidence until and unless it is substantiated by cogent evidence. Therefore, onus absolutely rested on the part of the management to establish that after completion of that project the said officer deputed there was retumed back. Of the contrary from the facts disclosed in the pleadings it transpires clearly that there are sufficient job under the management.

6. It is the specific allegation of the concerned workman that the management retrenched his illegally as per Section 2(oo) of the I.D. Act inspite of rendering continuous service from 5-4-94 to 9-3-97. He alleged that before his retrenchment the management neither issued any notice nor issued any chargesheet against him. Management has failed to establish any allegation against his in the matter of dereliction of duty or any other matter whatsoever before stopping him from work. Management on the contrary submitted that non-renewal of the service of the concerned workman was as a result of non-renewal of the contract of employment of the concerned workman. It is specific contentioin of the management that the concerned workman was appointed as temporary Overseer for a period of 6 months only with effect from 5-4-94. The appointment letter during evidence was marked as Ext. W-1. If this appointment letter is taken into consideration it will expose clearly that the concerned workman was appointed as a temporary Senior Overseer (Civil) for a period of 6 months for the collieries/department varying terms and conditions. It is seen that before issuing letter of appointment management interviewed the concerned workman and thereafter selected him for the post in question. If this appointment letter is taken into consideration it should be presumed that his service was liable to be terminated after expiry of 6 months. It is seen that instead of non-renewal of contract management time to time issued fresh appointment letters to the concerned workman without break in service. The attitude of the management if looked into will expose clearly that inspite of non-renewal of contract they issued fresh appointment from time to time though in each appointment letter they made reference of previous appointment letter. There was no reason is issuance of fresh appointment letters to the concerned workman without break in service. As such it has to be taken into consideration that service of the concerned workman which he rendered was absolutely continuous and more than 240 days in each calendar year. The First appointment letter Ext. W-1 is absolutely silent if such break is subject to renewal. Therefore it has to be presumed that after the terms of service is completed as per appointment letter his service was required to be stopped. It is seen that instead of stopping his service management issued appointment letters time to time without holding any interview or without imposing terms and conditions like that appointment letter marked as Ext. W-1. It is the specific allegation of the concerned workman that the management exploited his service continuously for years together using unfair labour practice. In course of hearing learned Advocate for his workman in support of his claim relied on the decision reported in 1995 Lab IC 2448 1996 Lab I.C. 1161, 2001 (90) FLR 666, 2003(96) FLR 211, 2002 Lab I.C. 3798, 2003 Supreme Court cases (L & S) 380, 2001 (91) FLR 343. In the decision reported in 1995 Lab I.C. 2448 Their Lordships of Punjab and Haryana High Court observed that termination of service of workman who initially was appointed on contractual basis but was allowed to continue his service with intermittent break for a period of 3 years without giving any notice despite continuity of work and job requirement amounts to unfair labour practice and is violation of Section 25F. His Lordship of M.P. High Court in the decision reported in 1996 Lab IC 1161 also held the same view, after making specific observation under Section 2(oo) and (bb) of the I.D. Act. Their Lordships of Gujarat High Court in the decision reported in 2001 (90) FLR 666 also held the same view. His Lordship of Delhi High Court in the decision reported in 2002 Lab IC 3798 observed that as the management have failed to establish that there was break of appointment on periodical contract such retrenchment was illegal making clear observation of Section 2(oo) and (bb) of the I.D. Act. In the decision reported in 2003 SCC (L&S) 380 his Lordship of the Hon'ble Apex Court observed clearly that burden to prove the ingredients of sub-clause (bb) of Section 2(oo) is on the employer. Employment must be shown to be under a contract which stipulated that it would to an end with the expiry of the project of the scheme and the worker must have been shown to that he was aware of such stipulation at the commencement of his employment. Mere proof of employment of casual worker or daily wagers in a Project scheme and the termination of their service on the project

of the service coming to an end not enough to attract the exception sub-clause (bb), being applicable. Accordingly termination amounted to retrenchment. On the contrary management in course of extending their argument relying on a decision reported in 2002 Lab I.C. 2981 and also C.W.P. No. 946 submitted that such stoppage of work of the concerned workman done by the management was not illegal or improper. I have carefully considered the decision referred to above and I find sufficient reason to believe that the principle of the decisions is not applicable in the instant case. I have already discussed above categorically that the management allowed the concerned workman to work continuously from 5-4-94 to 5-4-97. They have failed to establish that they entered into fresh contract with the concerned workman after issuance of first appointment letter (Ext. W-1). On the contrary they renewed the service of the concerned workman time to time and issued letters of appointment also time to time though there was no clause in the first appointment letter about renewal of contract. Accordingly after consideration of all the facts and circumstances there is sufficient reason to believe that the management by using unfair labour practice stopped the concerned workman from his service and in doing so that did not consider necessary to issue any notice or to pay any compensation under Section 25F of the Industrial Dispute Act. Management have failed to show that they are facing, surplus of staff and for which the service of the concerned workman will be over burden to their economy. Accordingly I do not find any scope to accept that plea taken by the management. It is the contention of the management that the concerned workman was a supervisory staff for which he cannot be considered as a workman under section 2(s)of the I.D. Act. The concerned workman in course of evidence categorically submitted that he used to work under control of the Manager (Civil) and the management entrusted him to supervise the works of other works of the contractors. Naturally onus rests on the management of establish that the concerned workman was a supervisory staff and he was entrusted with the job to work independently with separate entity. Untill and unless this fact is established by the management there is no reason to uphold such submission. On the contrary considering all materials on record including the pay slips, appointment letters there is sufficient reason to believe that the services of the concerned workman was not independent and had no separate entity. Therefore I should say that the concerned workman shall be considered as workman as per definition of Section 2(s) of the I.D. Act.

7. After careful consideration of all the facts and circumstances I find no dispute to hold that the services of the concerned workman was continuous and he worked for more than 240 days in each calendar year under the management. He was appointed on temporary service but after rendering continuous service for year together it was expected that the management would regularise the concerned workman but instead of doing so taking the plea of contractual service they stopped him from his service with effect form 9-3-97 without giving any notice or paying any compensation under Section 25F of the Industrial Disputes Act. I therefore, hold that such stoppage of service was illegal improper and also in violation to the principles of natural justice. Accordingly the concerned workman is entitled to get his relief according to his prayer. In the result, the following award is rendered :—

> "The action of the Tisco management in terminating the services of Shri Ashutosh Prasad Sinha from his service is not justified. Consequently he is entitled to be reinstated in his service in the post of Senior Overseer from the date of his termination with 50% back wages from the date of reference i.e. from 20-1-2000 to the date of his reinstatement in service with other consequential benefits."

The management is directed to implement the Award within three months form the date of publication of the Award in the Gazette of India in the light of the observation made above.

B. BISWAS, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2003

का. आ. 3390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. कों. लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 117/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल. 20012/224/97-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 14th November, 2003

S.O. 3390.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 117/98) of the Central Government Industrial Tribunal/Labour Court,, II, Dhanbad now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 12-11-2003.

[No. L-20012/224/97-IR (C-I)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri B. Biswas,
Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act, 1947

Reference No. 117 of 1998

PARTIES: Employers in relation to the management of Lodna Colliery of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : None.

On behalf of the employers : Shri D. K. Verma, Advocate

State : Jharkhand : Industry : Coal.

Dated, the 20th October, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/224/97-IR (C-I), dated, the 30th April, 1998.

SCHEDULE

"Whether the action of the management of Lodna Colliery of M/s. BCCL in dismissing the services of Shri Basdeo Beldar, Loader w.e.f. 27-2-96 is justified ? If not, to what relief is the concerned workman entitled ?"

2. The case of the concerned workman according to the written statement submitted by the sponsoring union on his behalf in brief is as follows :—

They submitted that the concerned workman was a permanent miner loader at Lodna colliery under the management. They alleged that in connection with the absence of the said workman from 8-2-93 management issued a chargesheet No. L/220/95 dt. 13-7-95 under the signature of Manager, Lodna Colliery who was not competent authority to the same. However, on receipt of the said chargesheet the concerned workman submitted his reply denying the charges brought against him. They alleged that inspite of assigning reason for his unauthorised absence in the reply given by the concerned workman management without accepting the same started domestic enquiry against him and thereafter relying on the report of the Enquiry Officer dismissed him from service illegally, arbitrarily and violating the principles of natural justice vide letter No. BCCL/L/Agent/96/PER/Dismissal/41/02604 dt. 27-2-96. Accordingly the concerned workman raised an industrial dispute which ultimately resulted reference to this Tribunal for adjudication. The sponsoring union accordingly on behalf of the concerned workman submitted prayer to pass award directing the management to reinstate the concerned workman to his service with full back wages and other consequential relief.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and allegations which the sponsoring union discolsed in the written statement submitted on behalf of the concerned workman.

They submitted that the concerned workman was appointed at Lodna colliery as Loader on 6-6-98 in place of his mother when his mother submitted resignation under V. R. Scheme. They alleged that the concerned workman was in the habit of remaining himself absent from duty unauthorisedly very often and that exceeded limit when again he started absenting from duty with effect from 8-2-93 unauthorisedly. They submitted that chargesheet was issued to the concerned workman for committing misconduct on the ground of absentism as per provision laid down in the certified standing order applicable to the general workmen of the colliery. On receipt of the said chargesheet the concerned workman submitted his reply but as it was found unsatisfactory the competent authority issued order for holding departmental enquiry against him. They submitted that in the said departmental enquiry concerned workman made his full participation and full opportunity was given to him to defend his case. They disclosed that in course of hearing of the said enquiry proceeding the concerned workman relied on some medical certificates to establish his claim of his absence. illness and cause of his absence. They submitted that before issuance of this chargesheet two chargesheets were issued earlier for committing similar type of misconduct. They submitted that in the year 1991, 1992 and 1993 the concerned workman attended to his duties for 51 days, 34 days and 11 days respectively. These attendance they discolsed that have exposed clearly how sincere and duty bound the concerned workman was in performing his duties. They submitted that the Enquiry Officer submitted his report holding the concerned workman guilty to the charges as in course of hearing the said charge was proved against him. They further disclosed that even after submission of enquiry report the disciplinary handing over copy of the Enquiry report gave opportunity to the concerned workman to put forth his representation within 72 hours but the concerned workman inspite of getting the said opportunity did not consider necessary to submit his representation within 72 hours in support of his pleas of innocence. They submitted that thereafter the competent authority dismissed the concerned workman from service after considering all aspects carefully and accordingly there is no scope to say that he was dismissed from service illegally, arbitrarily and violating the principle of natural justice. Accordingly they submitted that the claim of the concerned workman will be liable to be rejected.

4. The points to be decided in this reference are :—

"Whether the action of the management of Lodna Colliery of M/s BCCL in dismissing the services of Shri Basdeo Beldar, Loader w.e.f. 27-2-96 is justified ? If not, to what relief is the concerned workman entitled ?"

FINDINGS WITH REASONS

5. It transpires from the record that before taking up hearing argument on merit hearing on preliminary point

was taken up for consideration to assertain if the domestic enquiry held against the concerned workman was fair, proper and in accordance with the principle of natural justice. The said issue on preliminary points was disposed of by order No. 21 dt. 22-7-03. Accordingly at this stage there is reason to rediscuss the same. Now the point for consideration is whether the management have been able to substantiate the charge brought against the concerned workman and if so, whether the concerned workman is entitled to get any remedy in relation to punishment imposed upon him by invoking Section 11A of the Industrial Disputes Act. Considering the facts disclosed in the pleadings on both sides and also considering all other material facts I find no dispute to hold that the concerned workman got his appointment as Loader on 6-6-78 at Lodna colliery under order of the management. It is admitted fact that the concerned workman started absenting himself from duty with effect from 8-2-93 without giving any information to the management. It is the contention of the management that as such absence without prior intimation and also without prior sanction amounted to misconduct the competent authority issued chargesheet to him for violation of para 26.1.1 of the certified standing order applicable to the general workman of the colliery. It is admitted fact that workman not only received the said chargesheet but also submitted his reply wherein he assigned reasons of his unauthorised absence. As the reply given by the concerned workman was not satisfactory the competent authority issued order for holding domestic enquiry against the chargesheet Ext. M-1 speaks as follows :—

> "26.1.1 : Habitual late attendance or wilful or habitual absence from duty without sufficient cause."

6. Therefore, it is clear that on the ground of habitual and wilful absence with effect from 8-2-93 the concerned workman as committed misconduct as per para 26 .1.1 of the certified standing order the chargesheet was issued to him by the competent authority. In response to that chargesheet, the concerned workman submitted his reply which in course of evidence of MW-1 was marked as Ext. M-2. The concerned workman in his reply admitting his guilt for enjoying unauthorised leave have submitted that as he was suffering from mental disease he could not attend his duty. From the chargesheet it transpires that the concerned workman started himself absenting from duty unauthorisedly with effect from 8-2-93. The chargesheet was issued to him vide No. 2/220/95 dt. 13-7-95. Therefore, it is seen that about 2½ years of remaining himself about from duty unauthorisedly the chargesheet was issued. It is admitted fact that the concerned workman was examined by the Enquiry Officer and his statement was recorded. The concerned workman during his examination stated to the Enquiry Officer that as he was suffering from mental disease he was taken to Ranchi Mental Hospital and there he remained under treatment for considerable period. In support of his claim during enquiry proceeding he submitted a copy of Medical certificate issued by Dr. Mukesh Kumar Sinha. From this certificate it transpires that the concerned workman was under his treatment from 5-4-93 till 21-4-95 and he was declared medically fit to resume his duties. From this certificate it cannot be ascertained if the doctor who issued the same was attached to Ranchi Mental Hospital and the concerned workman was under his treatment. The concerned workman during enquiry proceeding did not consider necessary to examine him. During hearing the concerned workman did not consider necessary to submit a single scrap of paper to show that as mental patient he remained under treatment at Ranchi Mental Hospital. No medical paper also is forthcoming to show that he was simultaneouly under treatment of the doctor named above. In the circumstances, credibility of the Medical certificate which he relied on at the time of hearing before Enquiry Officer has come to a question and for which the same cannot be relied on. Accordingly creditibility of the medical certificate issued to the concerned workman declaring him medically fit for resuming his duties with effect the date of issuance of the same has to come a question. The chargesheet was issued to the concerned workman on 13-7-95 i.e. about three months of his getting himself medically fit to resume his duties. No statisfactory explanation on his part is forthcoming why he did not attend the place of his work to resume his duty after getting himself medically fit. It is the contention of the management that not only on this occasion but also on previous two occasions for committing misconduct on the ground of absentism two seperate chargesheet were issued to him. It is the allegation of the management that during the year 1991, 1992, and 1993 the concerned workman remained on duty for 51 days, 34 days and 11 days respectively. From the report of the enquiry officer it transpires that the concerned workman was also interrogated in that regard and in reply he took the same plea that due to his ailment he could attend to his duty but to substantiate that claim he failed to produce any authentic medical papers. No explanation is also forthconig on his par what circumstances prevented him to intimate the fact of his ailment to the management. The concerned workman also did not consider necessary to explain why he did not consider necessary to get his treatment from colliery hospital.

7. Accordingly after careful consideration of all the facts and circumstances discussed above there is sufficient reason to believe that he created a story of his ailment with a view to exonerate himself from the charge of misconduct brought against him by the management. In para-10 of the written statement the concerned workman disclosed that he submitted regular prescription and cash memo of the medicines purchases by him but did not disclose where he submitted the same. From the enquiry

papers excepting existence of one Xerox copy of his medical certificate I have failed to trace out any such papers i.e. prescription and cash memos. In course of hearing the case before Tribunal he also did not submit any such paper. Therefore, I consider that his claim as per para 10 of the written statement finds no basis and for which such submissions cannot be relied on.

8. Onus is absolutely rests on the concerned workman to substantiate his own claim and to assign reasonof his absence. I find no hesitation to say considering all relevant papers that the concerned workman lamentably has to substantitate his claim failed in order to disprove the charge brought against him under para 26.1.1 of the certified standing order. It is further seen from the materials on record that before taking any final step disciplinary authority issuing copy of the Enquriy report to the concerned workman asked him to submit his represenation within 72 hours but the concerned workman did not consider necessary to submit any such representation. The document marked Ext. 8 is self explanatory in this regard. Therefore, there is sufficient ground to hold that the concerned workman was very much reluctant to make any appeal before the Disciplinary authority for condonation of misconduct committed by him and for which the management considering the enquiry report and other material aspect dismissed him from service *vide* letter No. BCCL/L/Agent/96/Per/Dismissal/41/02604 dt. 27/29-2-96 (Ext. M-7).

I have carefully considered all materials on record and the concerned workman in course of hearing has failed to show that management illegally arbitrarily and violating the principle of natural justice dismissed him form service. I therefore, hold that management have been able to establish the charge brought against the concerned workman and there is no scope to say that in violating the principle of natural justice they dismissed him from service.

9. Now the point for consideration is if the concerned workman is entitled to get any relief under Section 11A of the I.D.Act. Section 11-A speaks as follows:—

> "Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceeds, the Labour Court, Tribunal or National Tribunal , as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require."

Therefore, according to this provision it is to be taken into consideration if the punishment inflicted on the concerned workman was justified or not. It transpires from the record that previous to this incident management issued two separate charge sheets against the concerned workman on two different occasions for committing misconduct on the ground of absentism.

10. On the same ground management issued this charge sheet to him on 15-7-95 i.e after a lapse of about two years of remaining continuous absent unauthorisedly. The concerned workman submitted his reply admitting the faults and disclosed that on the ground of his mental illness he could neither informed the management nor attend to his duty. The same plea was taken by him on previous occasions also. Inspite of taking such plea the concerned workman neither before the enquiry officer nor in course of hearing before this Tribunal was able to produce a single scrap of paper. Accordingly the plea taken by him could not be accepted at all.

For the interest of running administration every industry is to follow some guideline to maintain work culture of the workman not only for the interest of the industry but also to promote economic growth of the country. Whimsical act of any workman definitely stands in the way to maintain the discipline of this industry which is to be considered with all importance. It is not expected that a workman at his own choice can enjoy unauthorised leave for years together ignoring the discipline and hampering production. In the instant case the concerned workman exceeding all norms remained himself absent continuously for about two years before issuance of chargesheet without assigning any reason, he has failed to establish his claim lamentably. I consider that to maintain discipline and also for affecting production the step which the management had taken against him in any circumstances cannot be said to be unjustified and for which I do not find any cogent ground to reconsider the punishment inflicted upon him by invoking Section 11-A of the I.D Act. Accordingly, the concerned workman is not entitled to get any relief. In the result, the following award is rendered :—

> "The action of the management of Lodna Colliery of M/s BCCL of dismissing the services of Shri Basdeo Beldar, Loader w.e.f 27-2-96 is justified. Consequently he is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2003

का. आ. 3391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा. को. को. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 131/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल. 20012/403/94-आई. आर. (सी-I)]

एम. एस. गुप्ता, अवर सचिव

New Delhi, the 14th November, 2003

S.O. 3391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 131/95) of the Central Government Industrial Tribunal/Labour Court, II, Dhanbad now as shown in the annexure in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 12-11-2003.

[No. L-20012/403/94-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT : Shri B. Biswas, Presiding Officer

In the matter of an industrial dispute under Section 10(1)(d) of the I. D. Act., 1947.

Reference No. 131 of 1995

PARTIES: Employers in relation to the management of Loyabad Colliery of M/s. B.C.C.L and their workman.

APPEARANCES:

On behalf of the workman : Shri B. N. Singh, Advocate.

On behalf of the employers : Shri H. Nath, Advocate.

State : Jharkhand : Industry : Coal.

Dated, Dhanbad, the 31st October, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1) (d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/403/94-IR (C-I), dated, the 10th October, 1995

SCHEDULE

"Whether the action of the management of Loyabad Colliery under Sijua Area of M/s. BCCL in superannuating Shri Ram Bedan Bhar w.e.f. 1-7-92 is justified ?

2. The case of the concerned workman according to written statement submitted by the sponsoring Union on his behalf in brief is as follows:—

The sponsoring union submitted that the concerned workman got this appointment on 13-5-71 and at the relevant period was posted at Loyabad Colliery under Sijua Area as Tyndal. His identity card No. is ML-641008, CMPF A/C. No. is D/570495 and his service particulars have been recorded in Sl. No. W/1153 of the Form B Register. They submitted that the year of birth of the concerned workman was recorded as 1939 in the service excerpt which was supplied to him. In the identity card also the same date of birth was recorded. They submitted that on 24-2-91 the concerned workman while working at 11/12 seam of No .6 Pit at Loyabad colliery met a fasel accident and for which he sustained serious injuies to his person. As a result of which he lost his workmanship of heavy tyndal. They submitted that on the denial of the management to provide light job the concerned workman raised an industrial dispute for conciliation to which the management appeared but in course of hearing they did not raise any dispute over his date of birth. On the contrary management on 7-4-92 issued a notice wherein they intimated the concerned workman about his superannuation from service with effect from 1-7-92 on attaining his age of 60 years, assessing his year of birth as 1934. Which alleged to have been recorded in the Form B Register. They alleged that the management assessed his age illegally and arbitrarily. They relied on the duplicate Form B Register in support of their claim without producing his original Form B Register. They disclosed that as per original Form B register year of birth of the concerned workman was recorded as 1939 and that has got its confirmation as per I. D. card issued by the management. Even in the service excerpt they did not disclose that his year of birth was 1934 and not 1939. They alleged that the management illegally and arbitrarily violating the principle of natural justice superannuated the concerned workman from his service. Accordingly, the concerned workman submitted his prayer to pass award directing the management to reinstate in service with full back wages and other consequential relief considering his year of birth as 1939.

3. Management on the contrary after filing written statement-cum-rejoinder have denied all the claims and which the concerned workman asserted in the written statement submitted by the sponsoring Union on his behalf. They submitted that the concerned workman worked as Tyndal at Loyabad colliery since 13-5-71. At the time of his entry in the service his date of birth was recorded as 1932 in the Form B Register which is considered as Statutory Register under the Mines Act. They disclosed that as per bipartite agreement in case where date of birth is filled up with year only the date of birth of such workman is to be taken as 1st of July of the same year, and accordingly, in the case of the concerned workman his date of birth was recorded as 1-7-32 and he was retired from on his service with effect from 1-7-92 on attaining his age of superannuation i.e. 60 years. They disclosed that to this effect prior notice also was given to the concerned workman. They alleged that before raising industrial dispute the concerned workman never made any representation to the management about his grievances in the matter of alleged wrong recording of his age.

However, in course of hearing of conciliation proceeding they disclosed that date of birth recorded in the I.D. Register and service excerpt as 1939 appeared to be doubtful as his date of birth in the From 'B' register was recorded as 1932. They submitted that as Form B register is a statutory register the particulars recorded therein are binding upon both sides and for which the concerned workman rightly was superannuated from his service with effect from 1-7-92 considering his date of birth as 1-7-32. They denied the fact that arbitrarily, illegally and violating the principles of natural justice the concerned workman was superannuated from service and accordingly they submitted prayer to pass award rejecting the claim of the concerned workman as he is not entitled to get any relief according to his prayer.

4. The points to be decided in this reference are :—

" Whether the action of the management of Loyabad under Sijua Area of M/s. BCCL in superannuating Shri Ram Badan Bhar w.e.f. 1-7-92 is justified ? If not, to what relief Shri Bhar is entitled ?"

FINDINGS WITH REASONS

5. From the record it transpires that the sponsoring union in order to substantiate their claim have examined the concerned workman as WW-1. The management also in order to substantiate their claim examined one witness as MW-1. Considering the evidence of both sides I find no dispute to hold that the concerned workman was engaged as Tyndal at Loyabad colliery under Sijua area on 13-5-71. The main contention of the concerned workman is that at the time of his entry in the service his year of birth in the Statutory Form B Register was recorded as 1939. He further disclosed that after joining management issued identity card to him wherein also his year of birth was recorded as 1939. He alleged that management never disclosed that his year of birth was 1932 and not 1939. He alleged that on 7-4-92 management issued notice of his superannuation from the service and at that time he came to know that his date of birth was recorded as 1-7-32 and he will be superannuated from the service on completing his age of sixty years with effect from 1-7-92. He thereafter submitted his representation to the management to that effect but without giving any importance to his representation they superannuated him from his service with effect from 1-7-92. Management on the contrary submitted that at the time of entry in the service year of birth of the concerned workman in the Form B Register was recorded as 1932. They submitted that as per joint decision of the management and Union it was settled that in case where date of birth in the Form B Register is filled up with year in such case date of birth of the workman to be considered as 1st of July of that year and accordingly the date of birth of the concerned workman was recorded as 1-7-32 and he was rightly superannuated from his service with effect from 1-7-92. MW-1 in course of his evidence instead of producing the original From B Register produced its photocopy taking the plea that the same was kept at Area office and the same is not traceable. This witness also in course of his evidence relied on the original I.D. card register and copy of the service excerpt given to the concerned workman. These documents during his evidence were marked as Ext. M-1, M-2 and M-3 respectively. It is the specific claim of the management that year of birth of the concerned workman at the time of his entry in the service was recorded as 1932. It is seen that the name of the concerned workman in the copy of the Form B Register has appeared in Sl.No. 1153 I have carefully considered the year of birth of the concerned workman recorded therein and in no circumstances there is scope to say that it was recorded as 1932. The picture would have been clear if the management could produce the original From B Register. It is admitted fact that after joining in the service I.D. card was issued to the concerned workman and his full service particulars were recorded in the I.D. Register. This register during evidence of MW-1 was marked as Ext. M-2. The name of the concerned workman is appearing in Sl. No. ML/41008. From this register it transpires clearly that year of birth of the concerned workman was recorded as 1939 and not as 1932. Concerned workman during his evidence relied on copy of his identity card (X for identification) which tallies with the date of birth recorded in the I.D. Register. It further transpires that I.D. Card was issued to the concerned workman on 11-7-93 under signature of the management's official. Management in course of hearing has failed to establish that the identity card which the concerned workman relied on was a manufactured one. It is seen that in the year 1986 management issued service excerpt to the concerned workman. The concerned workman under his signature returned it back to the management. The said service excerpt during evidence of MW-1 was marked as Ext. M-3. In the column of date of birth it transpires clearly that date of birth of the concerned workman was first recorded as 1939. Thereafter by way of manipulation it was rewritten as 1932 and thereafter it was struck down and afresh it was written as 1932 without bearing any signature of the management. Considering all aspect carefully there is reason to believe that the concerned workman definitely would raise his objection if this manipulation in date of birth was done before it was handed over to him. There as is such reason to believe that such manipulation was done after it was received back from the concerned workman. Now considering these three documents it is clear that from the copy of the Form B Register there is no scope to draw any conclusion that year of birth of the concerned workman was recorded as 1932, while from the I.D. Register it transpires clearly that year of birth was recorded as 1939. It is seen that year of birth of the concerned workman in the service excerpt was mainpulated. It is fact that the concerned workman in course of hearing has failed to produce any authentic paper to show that his year of birth was 1939 and not 1932 but for that reason

there is no scope to ignore his claim. Here in the instant case onus absolutely rests on the management to establish that year of birth of the concerned workman was 1932.

6. Prior to implementation of JBCCI circular No. 76 date of birth in the Form B Register was to be recorded on the basis of authentic papers submitted by the workman. In absence of any such paper the concerned workman was to be examined by the company's medical officer and on the basis of his report age of the workman was recorded in the Form B Register and that report of the medical officer was to be considered as final and conclusive in the matter of assessment of the age of a workman. In course of hearing management have failed to establish relying on which paper the year of birth of the concerned workman was recorded in the Form B Register.

7. Again J.B.C.C.I. circular No.76 speaks clearly that if it appears that age of the workman recorded in different registers varies in such case in absence of any cogent proof to confirm the exact year/date of birth his age is to be assessed by the medical board to wipe out such anomaly. There is no dispute to hold that Form B Register is a statutory document under the Mines Act and all entries therein are binding upon both sides. I.D. register and service excerpt though are not considered as statutory documents its importance too cannot be ignored. These registers maintained by the management and all entries therein in respect of service particulars of a workman are taken from the Form B register. Accordingly, management cannot, avoid their responsibility to explain if any discrepancy relating to any entry comes into picture. Similar principle is to be followed in case of service excerpt. It was the decision of the management to supply service excerpt to the workman with a view to ascertain the correctness of its entries. I think there remains no scope on the part of a workman like this case to raise any dispute relating to correctness of the entries if the management appears to be involved in manipulating any entry therein. It is seen that management did not consider necessary to infirm the concerned workman that his date of birth in the Form B Register was recorded as 1932 and not 1939, particularly when such serious discrepancy came into existence and as a result the concerned workman was deprived of raising dispute over this matter. In course of hearing management failed to give any satisfactory explanation to this effect. When JBCCI circular No. 76 has specifically pointed out which course will remain open to the management if entry relating to date of birth of a workman differs at different registers of the management, satisfactory explanation is forthcoming why they declined to follow that specific instruction.

8. I have already discussed above that year of birth recorded in the duplicate Form B Register appears to be very hazy and for which there is no scope to arrive at any definite conclusion that it was recorded as 1932.

9. The concerned workman in course of hearing has failed to produce any authentic paper to show that his year of birth was 1939. Accordingly I hold that the age of the concerned workman ought to have been assessed by the Apex Medical Board before he was superannuated from his service. It is seen that if the year of birth of the concerned workman is considered as 1939 even in that case there is no scope of his reinstatement in service as he has already crossed his date of superannuation in the year 1999. However, the management cannot avoid to pay wages for the period of his idleness if it is established that he was illegally superannuated from his service ignoring the specific instruction given in JBCCI circular No. 76. I, therefore, hold that age of the concerned workman is to be assessed by the Apex Medical Board.

In the result, the following award is rendered :—

"The action of the management of Loyabad Colliery under Sijua Area of M/s. BCCL in superannuating Shri Ram Badan Bhar w.e.f. 1-7-32 is not justified. The management is directed to send the concerned workman to the Apex Medical Board for assessment of his age and the assessment of the age by the Medical Board of the concerned workman will be final."

The management is directed to implement the Award within three months from the date of publication of the Award in the Gazette of India in the light of the observation made above.

B. BISWAS, Presiding Officer.

नई दिल्ली, 14 नवम्बर, 2003

का. आ. 3392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयर लाईंस के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, मुम्बई के पंचाट (संदर्भ संख्या 35/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल.-11012/78/2001-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 14th November, 2003

S.O. 3392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2002) of the Central Government Industrial Tribunal/ Labour Court-II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Air lines and their workman, which was received by the Central Government on 12-11-2003.

[No. L-11012/78/2001-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT:

S. N. Saundankar, Presiding Officer

Reference No. CGIT-2/35 of 2002

EMPLOYERS IN RELATION TO THE MANAGEMENT OF INDIAN AIRLINES

The General Manager (Personnel),
Indian Airlines Limited,
New Engineering Complex, Sahar,
Mumbai-400 099.

V/s.

THEIR WORKMEN

The Chairman,
Air Corporations Employees Union,
Old Airport, Santacrux (East),
Mumbai-400 029.

APPEARANCES:

For the employer : Mrs. Pooja Kulkarni, Advocate.

For the workmen : Mr. A. K. Menon, Representative.

Mumbai, dated 9th October, 2003

AWARD
Part-1

The Government of India, Ministry of Labour by its Order No. L-11012/78/2001-IR(C-I) dated 10-4-2002 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of Indian Airlines Limited, Mumbai in removal of Shri R. S. Masurkar from the services w.e.f. 21-12-2000 is legal and justified? If not, to what relief is the workman concerned entitled?"

2. Workman Masurkar was appointed as Helper in the year 1985 in management Indian Airlines and was promoted as Senior Commercial Helper in 1992. Vide Claim Statement (Exhibit 6) Union pleaded that though workman served the Airlines efficiently with unblemished record, he was given charge-sheet dated 23/25-9-1995 alleging that he committed theft on 17-4-1993 of gold Mangalsutra from the baggage of the passenger valued at Rs. 15,500/- and that inquiry of the said charge-sheet was made in the year 2000 i.e. after about 7 years and that based on the inquiry report workman was removed from the service by the Order w.e.f. 21-12-2000. It is the contention of Union that domestic inquiry was not properly conducted in as much as complainant nor the panchas were examined thereby material witnesses were with held by the Inquiry Officer. It is averred that Inquiry Officer without considering the evidence and the record concluded that workman committed misconduct, consequently, findings recorded by him is perverse. It is contended that the Inquiry Officer found the workman guilty for charge of theft, fraud and dishonesty in connection with business or property of the Company as well as attempted to commit the said offence which is contrary to the provisions of law and for all these reasons, it is the contention of Union that the inquiry is against the principles of natural justice hence vitiates and the findings not perverse and therefore the management Company be directed to reinstate the workman in service with full back wages.

3. Management Airlines resisted the claim of Union vide written statement (Exhibit 7) contending that the workman committed theft of gold Mangalsutra worth Rs.15,000/- and cash Rs.3,500/- from the registered baggage of passenger Mr. Arora travelling on IC 406 from Bombay-Delhi on 17-4-1993 and that the jewellery was recovered from the workman was identified by the concerned passenger. Since police investigation was being done by the police, after receiving the police papers and verifying, a charge-sheet was issued to workman. It is contended that workman 'rolonged the inquiry saying the criminal case on the alleged incident filed by the police is pending before the Metropolitan Magistrate, Andheri. It is contended that during enquiry on examining the material witnesses the Inquiry Officer giving sufficient opportunity to the workman, submitted the report dated 24-10-2000. It is contended workman was given opportunity to say on the report and the proposed punishment and considering the entire record, the punishment of removal was imposed by the Disciplinary Authority under the Standing Orders (Discipline and Appeal) Rules applicable to workman. It is contended since findings based on the evidence and record and giving sufficient opportunity inquiry was completed does not vitiate. It is contended the claim of the workman being ill founded be dismissed with costs in limine.

4. On the basis of pleadings Issues were framed at Exhibit 10. Union vide pursis (Exhibit-12) did not lead oral evidence in so far as preliminary issues whereas Senior Manager (Stores and Purchase) / Inquiry Officer Mr. D. V. Nair filed affidavit in lieu of Examination-in-Chief (Exhibit 13) and the management closed oral evidence vide pursis (Exhibit 14).

5. Union filed written submissions with copies of rulings Exhibit 15 and the management Exhibit 16. On perusing the record, written submissions and hearing the Learned representatives for the workman and counsel for

the management, I record my findings on the preliminary issues for the reasons stated below:

Issues	Findings
1. Whether the domestic Inquiry conducted against the workman was against the principles of natural justice?	Yes.
2. Whether the findings of the Inquiry Officer are perverse ?	Yes.

REASONS

6. Admittedly domestic inquiry was conducted against the workman in connection with charge-sheet dated 23/25-9-1995. According to Union domestic inquiry was not proper and the findings recorded by the Inquiry Officer are perverse. Management Company refuted the same contending that inquiry was held giving sufficient opportunity and that the findings based on the documents and evidence on record. Their Lordships of the Apex Court in case Sur Enamel and Stamping Works V/s. Their Workmen 1963 II LLJ SCC 367, ruled that enquiry cannot be said to have been properly held unless:

(1) the employee proceeded against has been informed clearly of the charges levelled against him;

(2) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges; .

(3) the employee is given a fair opportunity to cross examine the witnesses;

(4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and

(5) the Inquiry Officer records his findings with reasons for the same in his report.

7. Inquiry Officer Mr. Nair in his cross-examination para 19 concede that he had relied on the FIR filed by one Manoharlal Ganpat Rao Arora however said Arora was not examined in the inquiry. It is to be noted that in the charge-sheet the name of the informant was M. L. Arora and not M. G. Arora. Inquiry Officer relied on the Panchanama for arriving at the conclusion though admittedly Panchas were not examined. Panchanama and FIR were written in Marathi script. In the inquiry proceedings, statement of the informant Arora were not produced. No documents in connection with identifying the stolen property by Arora was available before the Inquiry Officer. The purpose of domestic inquiry is not to punish the delinquent but to weed out the rotten wood from the forest. It is to be found out on consideration as to whether the procedure adopted by the appropriate authority is in accordance with law or whether the authority has acted in good faith. The fact that Inquiry Officer without examining the witnesses, positively holds, is certainly unnatural and here the principles of natural justice come into play. In the light of the principles of natural justice if looked, the admissions referred to above, it can certainly be said that prejudice had caused to the workman.

8. On perusal the inquiry proceedings filed with list (Exhibit 9) it is seen as per the Standing Orders framed under Air Corporation Act, 1953, the inquiry was conducted which was admittedly repealed which shows that the inquiry was conducted not in consonance with the provisions of the Act applicable to workman which affects the enquiry.

9. The Learned representative of the Union inviting attention to the documents filed on record and the Order of the Hon'ble National Industrial Tribunal dated 26-2-2003 in Approval Application No. NTB-96 of 2000 (arising out of Ref. No. NTB-1/90) submits that the Presiding Officer of the National Industrial Tribunal in connection with the domestic inquiry conducted against the workman clearly opined the same was improper and the findings perverse, and consequently, set aside the inquiry and that the same inquiry is the issue before this Tribunal. He urged that on detail scrutiny of evidence, the said inquiry was found vitiated. At this juncture the Learned Counsel for the management Company submitted that the finding of the NIT is not binding on this Tribunal and therefore that can safely be over looked. The fact that prejudice had caused to the workman in conducting domestic inquiry consequently vitiates.

10. Mr. Menon the Learned Representative for the Union submits that for the very charge of theft of gold Mangalsutra and cash, workman was acquitted by the Metropolitan Magistrate and therefore the very charge for which domestic inquiry held, goes away. At this stage we are on the fairness of inquiry therefore cannot go to the root of the action of punishment imposed by the management. Suffice therefore to say that, domestic inquiry vitiates and that the findings recorded by the Inquiry Officer are not based on the evidence and documents and therefore perverse.

11. Since there is a prayer on behalf of the management Company that it wants to prove the misconduct it is given an opportunity to lead evidence to prove the misconduct of the workman. Issues are answered accordingly and hence the order:

ORDER

The domestic inquiry conducted against the workman was not as per the principles of natural justice and the findings of the Inquiry Officer are perverse.

Management is allowed to lead evidence to justify its action.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2003

का. आ. 3393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.बी. पी. को. लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, मुम्बई के पंचाट (संदर्भ संख्या 74/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-11-2003 को प्राप्त हुआ था।

[सं. एल. 30012/114/98-आई. आर. (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 14th November, 2003

S.O. 3393.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 74/99) of the Central Government Industrial Tribunal-cum-Labour Court, II, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of I.B.P.Co. Ltd. and their workman, which was received by the Central Government on 12-11-2003.

[No. L-30012/114/98-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 2, MUMBAI

PRESENT:

S.N. Saundankar, Presiding Officer

Reference No. CGIT-2/74 of 1999

Employers in relation to the Management of M/s. I.B.P Co. Limited

The General Manager (WR),
M/s. I.B.P Co. Ltd.,
Allahabad Bank Bldg.,
Mumbai Samachar Marg,
Mumbai-400023.

V/s.

THEIR WORKMEN

Shri Cyprian D'Souza,
Chikuwala Chawl,
Room No. 6,
Bhatwadi, Ghatkopar,
Mumbai-400084.

APPEARANCES:

For the employer : Mr. D. M. Utekar, Advocate.

For the workmen : Mr. S.V. Alva, Advocate.

Mumbai, dated 27th October, 2003

AWARD

Part-II

By the Interim Award dated 15-10-2001 this Tribunal held that the domestic enquiry conducted against the workman D'Souza was as per the principles of natural justice and the findings recorded by the inquiry officer are not perverse, consequenlty point as to whether the punishment imposed on the workman interminating his service is legal and justified in the context of the action of the management in the light of issues Nos. 3 & 4 remained for the adjudication of this Tribunal.

2. Punishment of termination was imposed on the workman for theft of five liters of Petrol from the Tank Lorry by using fake dip rod on transit by breaking the seals of Master Valve Box and sold the same for unlawful gain and loss to the company in collusion with Driver Mr. Khaire while on duty on 31-10-1994 vide charge-sheet dated 24-11-1994. According to workman, petrol was not stolen however it fell short due to evaporation etc. On the other hand, the management Company contended that the workman with dishonest intention took out petrol from the Tank Lorry and sold for his gain which amounts to grave misconduct for which the punishment of termination is apt and adequate.

3. Workman filed affidavit in lieu of Examination in Chief (Exhibit 41) and closed oral evidence vide purshis (Exhibit 42). Senior Manager (P & I R) Mr. Nayak filed affidavit (Exhibit 43) and the Company closed oral evidence (Exhibit 48). Workman filed written submissions along with the copies of rulings Exhibit 49 and the management Company Exhibit 50.

4. On perusing the record, the written submissions and hearing the counsels I record my findings on the Issues for the reasons mentioned below :

Issues	Findings
3. Whether the action of the management in terminating the service of D'Souza w.e.f. 2-11-1995 is justified?	Punishment being disproportionate Action of the management is neither legal nor justified.
4. If not, what relief he is entitled to?	As per order below.

REASONS

5. Since the domestic inquiry conducted against the workman was fair, point crops on as to whether the punishment imposed is proportionate to the proved charges or otherwise in the light of the provisions under Section 11-A of the Industrial Disputes Act. So far power under this section is concerned. Their Lordships of Supreme Court in Mithilesh Singh V/s. Union of India & Ors. 2003 SCC L & S 271 observed:

> "the scope of interference with punishment awarded by Disciplinary Authority under Section 11-A of the Industrial Disputes Act is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same."

Workman D'Souza was terminated from the service based on the findings recorded by the Inquiry Officer on the theft of five litres of petrol from the Tank Lorry. It is for the workman to point out as to how the punishment imposed is harsh and disproportionate. It is well settled that penalty imposed must be commensurate with the gravity of offence charged and that discretion conferred by Section 11-A of the Act on the Tribunal is to be exercised considering the record as a whole. The Learned Counsel for the workman Mr. Alva submits that for the alleged theft of five litres of petrol, punishment of removal is harsh and shockingly disproportionate and to support this submission he has relied on the decision in Mahindra & Mahindra Ltd. V/s. J.V. Akerkar. On the other hand, the Learned Counsel Mr. Utekar submits that the workman was a Cleaner on the Tank Lorry and that it was his duty to see that the property of his master is well protected however by selling petrol for his unlawful gain he shown that he is most unfaithful. He submits such employees do not deserve to remain in service even for a second. According to him the quantitative aspect of the misconduct cannot be lost sight of whether it be a bit or a million rupee relying on the decisions filed with written submissions (Exhibit 50). Mr. Utekar vehemently urged that for the offence of theft of the property of master the employees are to be dealt seriously in order to show lesson to wrong doers.

6. On perusal the record it is seen workman put about 12 years service. Senior Manager Mr. Nayak admitted that workman was not punished earlier which shows his past record was clean. Considering the age of the workman, the nature of misconduct and that he is away from service since many years and that his past record is unblemished, relying on the decisions referred to above, to my view, the penalty of termination imposed on the workman a poor Cleaner for stealing of five litres petrol, is rather harsh, disproportionate and it needs to be interferred and that punishment of withholding of two increments in future is apt and proportionate and the same needs to be imposed without giving back wages. Issues are answered accordingly and hence the order :

ORDER

The action of the management I.B.P. Co. Limited in imposing the punishment of terminating the services of workman D'Souza a Cleaner is disproportionate and therefore illegal and unjustified and that punishment of withholding of two increments in future is adequate and the same is imposed upon him instead, punishment of dismissal. Consequently, the management is directed to reinstate the workman in service with continuity, however without back wages.

S. N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 17 नवम्बर, 2003

का.आ. 3394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ त्रेवनकोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार लेबर कोर्ट, कोलाम के पंचाट [संदर्भ संख्या आई डी० नं० 4/2000 (सी)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2003 को प्राप्त हुआ था।

[सं. एल-12012/271/99-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 17th November, 2003

S.O. 3394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award [I.D. No. 4/2000 (C)] of the Central Government Labour Court, Kollam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Travancore and their workman, which was received by the Central Government on 14-11-2003.

[No. L-12012/271/99-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, KOLLAM

PRESENT:

Shri K. Sasidharan Nair, Presiding Officer

Monday the 21st Day of July 2003/30th Ashadha, 1925

Industrial Dispute No. 4/2000(C)

BETWEEN

The Managing Director,
State Bank of Travancore,
Thycaud, Trivandrum : Management

AND

Sri K. Balan,
Meenathethil Kurumbala North,
Pandalam P. O. : Workman

REPRESENTATIONS:

For the management : Sri R. Somanathan, Advocate, Thiruvananthapuram

For the workman : M/s. H. B. Shenoy & Ashok B. Shenoy, Lakshmi B. Shenoy & Priya K. R. Advocates, 'Vatsal', 39/187, Krishnaswamy Road, Ernakulam, Cochin-682035

AWARD

This is an Industrial Dispute referred by the Government of India, as per Order No. L-12012/271/99-IR (B-I) dated 6th October 2000, under Section 10(1)(d) of the Industrial Disputes Act, 1947, for adjudication of the dispute between the management of State Bank of Travancore, Trivandrum and their workman Sri K. Balan.

2. The issue referred for adjudication is as follows:

"Whether the action of the management of State Bank of Travancore in retrenchment of the service of Sri K. Balan w.e.f. 3-12-1998 is justifiable? If not, what relief the workman is entitled?"

3. In pursuance of the summons, both parties entered appearance and filed their respective pleadings. When the case came up for evidence the workman remained absent and the counsel for the workman reported no instruction. So the workman was set exparte. The management also was absent. Considering the issue referred for adjudication, the burden is upon the workman to prove the legality of the retrenchment order and as no evidence has been adduced by the workman, his claims are only to be dismissed.

Hence an award is passed dismissing the claims of the workman.

Dated this the 21st day of July 2003.

K. SASIDHARAN NAIR, Presiding Officer.

नई दिल्ली, 17 नवम्बर, 2003

का.आ. 3395.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय भन्डार के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ (संदर्भ संख्या 2/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2003 को प्राप्त हुआ था।

[सं. एल-42012/75/2002-आई आर (सी-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 17th November, 2003

S.O. 3395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 2/2003) of the Central Government/Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Kendriya Bhandar, and their workmen, received by the Central Government on 14-11-2003.

[No. L-42012/75/2002-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT:

Shrikant Shukla, Presiding Officer

Industrial Dispute No. 2/2003

Ref. No. L-42012/75/2002-IR(CM-II) dt. 5-11-2002

BETWEEN

Anand Singh Pawar S/o Umed Singh Pawar, R/o Qrt. No. 44/Type-IV, Kendranchal Colony, Lucknow

AND

The Regional Manager, Kendriya Bhandar, GIC Colony, Type-II, 46, Sector Q, Aliganj, Lucknow.

AWARD

The worker A. S. Pawar has filed the statement of claim alleging therein that he was appointed initially as daily rated helper w. e. f. 20-10-98 and has been working under Regional Manager, Kendriya Bhandar, GIC Colony, Type-II, 46, Sector Q, Aliganj, Lucknow. He has further alleged that he has worked continuously without any break and has completed 240 days in each calendar year to the satisfaction of the opposite party. Although work and post was available to the workman but his services were terminated by order dated 22-2-2001 with immediate effect by DGM (F & A) of Kendriya Bhandar. It is not worthy that no show cause notice or any disciplinary proceedings was initiated against the workman and he terminated without any reason, this is violation of Section 25-B of the I. D. Act, 1947. While terminating his services no notice or compensation was given to the workman as provided in Section 25-F of the I. D. Act. It is therefore prayed that the court should hold that the termination of the workman is illegal and he is entitled for reinstatement with full back wages.

The opposite party Regional Manager has filed the written statement A2-11 that the Kendriya Bhandar is a Govt. Co-operative Society registered under the Co-operative Societies Act and is not department of the Central Govt. and it is not constituted under any Act, passed by the Parliament as such Kendriya Bhandar is not an statutory corporation. Central Govt. is not the appropriate government under Section 2(a) of the I. D. Act, 1947 for

making reference for adjudication to Tribunal. Therefore the order of reference is bad in law. The opposite party has also not admitted that the claim of the workman as alleged by the workman. It is admitted that the workman was engaged as daily rated helper w.e.f. 20-10-98 to work at IIM, Lucknow store. However, he was transfere to ITI Naini Store. The concerned workman was terminated w.e.f. 22-2-2001. Therefore contention of the concerned workman that he was continuing in the employment of the Kendriya Bhandar on the date of filling claim in April 2003 is mis-conceisved and incorrect and denied. It is also alleged by the opposite party that the workman was involved in indiscipline and he mis-guided the employees, committed acts against the interest of the society any demanded illegal money from suppliers. On the complaint made by the Kendriya Bhandar, Lucknow, Officers from the Head Office enquired into the allegations on 22-2-2001, on the enquiry the allegations against the workman was found substance and it was decided to dispense with the services of the concerned workman. Accordingly termination order dt. 22-2-2001 was issued. It is also denied that the worker completed 240 days in each calendar year from Oct. 1998 to Feb. 2001 there was no work for him at Kendriya Bhandar as such he was informed that his services are no longer required. The opposite party has stated that they have not violated the provisions of Sections 25 (f) & (g) of the I. D. Act.

Subsequently in due course of the proceeding the parties have filed compromise i e. C-18. It is written that workman ready to do the services in the department and the employer is ready to take the workman in service, the conditions of the agreement are as follows:

A. The employer (Kendriya Bhandar) under takes to engage the workman within three months either of New Stores of Kendriya Bhandar to be opened at Simla or Ranchi or any other branches. It will remain open for the management to transfer him any where in any of the branch of the Kendriya Bhandar, at the existing salary payable at respective branch.

B. That the workman undertakes to work to the satisfaction of the management.

C. The case be disposed off in terms of the above agreement.

The above compromise disposed the entire dispute between the parties. Therefore the reference referred for adjudication is disposed of in terms of the compromise of the parties and accordingly the reference is disposed of Compromise application shall form part of the award.

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 17 नवम्बर, 2003

का.आ. 3396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एम. सी. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गोदावरीखानी (संदर्भ संख्या 30/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2003 को प्राप्त हुआ था।

[सं. एल.-22025/2/2003-आई. आर. (सी.-II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 17th November, 2003

S.O. 3396.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2003) of the Industrial Tribunal-cum-Labour Court, Godavarikhani as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 14-11-2003.

[No. L-22025/2/2003-IR (C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CHAIRMAN INDUSTRIAL TBIBUNAL CUM LABOUR COURT, GODAVARIKHANI

Present : Smt. K. Suvarchala, M.A., B.L., Chairman-cum-Presiding Officer

Thursday the 16th Day of October, 2003.

Industrial Dispute No. 30 of 2003

BETWEEN

Abdul Khaleel, S/o Abdul Hameed,
Aged about 36 years, E-2842929,
Ex-Coal Filler,
C/o Sri B. Anarender Rao, Advocate,
Qr. No. ST2-317, Bus Stand Colony,
Godavarikhani, Distt. Karimnagar,
Andhra Pradesh, Pin No. 505 209 —Petitioner

AND

The General Manager,
M/s. Singareni Collieries Col. Ltd.,
Srirampur (Projects) Area,
Srirampur, Distt. Adilabad,
Andhra Pradesh. —Respondent.

This petition coming before me for final hearing in the presence of Sri B. Anarender Rao, Advocate for the petitioner and of Sri D. Krishna Murthy, Law Officer for the respondent and having stood over for consideration this date, the court passed the following :—

AWARD

1. This petitioner filed the petition to set-aside the dismissal order dt. 11-9-97 dismissing the petitioner retrospectively from 22-3-96 and direct the respondent company to reinstate the petitioner into service with continuity of service and all other consequential attendant benefits including full back-wages.

2. The averments of the petition are as follows :—

The petitioner was appointed as Badli Filler during March, 1987 in the respondent company. During the year, 1993, he was promoted as Coal Filler. The petitioner has also passed Coal Cutter; and later his services were confirmed inthe post of Coal Filler and Timbering tests and underwent training during the year 1991 at RK-8 Incline Eversince his appointment, the petitioner discharged his duties to the entire satisfaction of his superiors till his dismisal from service through reference No. SRP(P)/P(IR)/35/97-2271, dated 11-9-97.

3. The respondent has not issued any charge-sheet nor conducted any domestic enquiry affording him fare opportunity to defend himself. When the petitioner approached along with union leaders, copy of dismissal order dt. 11-9-97 was served on him. The respondent company foisted false allegation of absenteeism under company's standing order No. 25. 31 for absenting from duty without sanctioned leave or sufficient cause. The charge levelled is false. The petitioner has worked under the respondent company for about 10 years continuously from March, 1987 onwards. During March, 1986, the petitioner fell seriously ill. He applied for sanction of leave and took treatment in the company's hospital and other private hospitals and Government Hospitals. He had taken treatment for Jaundice, Nosal Allergy due to coal dust and severe body pains etc., There is sufficient cause for the absence of the petitioner. The absence is not intentional. The prolonged treatment underwhent by the petitioner is substantiated by the bunch of medical certificates issued by the company hospital and other hospitals.

4. The company had conducted exparte enquiry which is against the standing orders of the company and against the principles of natural justice. Even, show cause notice was not issued to the petitioner before imposing the capital punishment of dismissal from service. The company had dismissed the petitioner with retrospective effect, i.e., w.e.f. 22-3-96 through proceds. dt. 11-9-97. The dismissal order cannot be sustained and the entire proceedings are void ab-initio. The petitioner had served the company for ten years. His services were confirmed during the year 1993 itself and after his promotion as coal filler, he became a permanent employee of the company. Inspite of working for ten years, dismissing the petitioner with retrospective effect is against law and against the principles of natural justice. Hence, he filed the petition for the above said relief.

5. To this, the respondent filed the counter denying the averments of the petition. As far the respondent is concerned, it is a mine and the appropriate Government under Industrial Disputes Act is Central Government. Hence, this Tribunal has no jurisdiction to adjudicate the issue. Since it is a state amendment and not applicable to the respondent company.

6. The petitioner was appointed as Badli Filler during March 1987 and in the year he was promoted as Coal Filler The petitioner remained absent from duty from 22-3-96 to 6-2-97 without any sanctioned leave, prior permission or sufficient cause. The petitioner was issued charge-sheet vide Lr. No. SRP-2/32CS/97/302, dt. 6-2-97 and the same was sent to his native place address available in the respondent company records by Registered Post with Acknowledgement due. A copy of the charge-sheet was also displayed onthe notice board of the Mine. The Registered cover returned undelivered. Further enquiry notice dt. 22-2-97 was sent to the native place of the petitioner by Registered Post with Ack. due with an advise to attend for enquiry on 25-3-97 at 8.30 A.M., at the office of SOM, SRP-3 Incline. The said notice dt. 22-2-97 was also returned undelivered by the postal authorities. Hence, the charge-sheet-cum-enquiry notice was published in 'Andhra Jyoti' Telugu daily newspaper dt. 11-3-97 advising the petitioner to attend for enquiry at 3.30 P.M., on 1-4-97 at the office of SOM. SRP. 2 Incline. Inspite of publication of notice in the newspaper, the petitioner did not attend the enquiry and as such, the enquiry was conducted exparte following the principles of natural justice.

7. The enquiry report was sent to the petitioner to his native address. The cover containing the enquiry report was returned undelivered by the postal authorities. The notice was published in the Andhra Jyothi Telugu daily newspaper on 25-6-97 informing the petitioner that a copy of the enquiry report was made available at the office of GM, SRP and he may collect the same within one week and submit his explanation on the enquiry report. But the petitioner neither collected the enquiry report nor submitted any representation. The authorities considered the enquiry report and took a decision to dismiss the petitioner. Accordingly, the petitioner was dismissed from the services of the respondent company w.e.f., 22-3-96. The petitioner did not attend for duty. The charge-sheet and enquiry notices were sent to his home address available in the respondent company records. The enquiry was conducted after giving a fair and reasonable opportunity to the petitioner to defend his case, produce witnesses and documents in support of his case. The petitioner never informed to the company that he is undergoing treatment. Hence, the action taken by the respondent is as per rules. Hence, the petition may be dismissed with costs.

8. On behalf of the petitioner, Ex. W-1 to Ex. W-13 are marked.

On behalf of the respondent management, Ex. M-1 to Ex. M-11 are marked.

9. Heard both sides.

10. It is an admitted fact that the petitioner worked in the respondent company as Coal Filler upto March, 1996. The version of the petitioner is that when he approached the respondent company authorities for his employment without serving him dismissal order on 11-9-97, the respondent had shown that he was dismissed from service since 22-3-96. The petitioner filed the present petition stating that the dismissal order served by the company is not as per rules and the same may be set-aside and allow the petitioner to reinstate him in the company.

11. The first and foremost point raised by the respondent company is that this Tribunal is constituted under State enactment and the respondent company is Central Government organisation. Hence, this Tribunal has no jurisdiction to entertain the petition of the petitioner.

12. The point for consideration is whether the Industrial Tribunal-cum-Labour Court constituted at Godavarikhani is having jurisdiction over the dispute?

13. The Advocate-for the petitioner argued that this Court is having jurisdiction over the dispute. He also cited 1998 (5) ALD 16(DB)—U. Chinnappa Vs. Cotton Corporation of India and others.

> The question that falls for our consideration in this writ petition is whether a workman employed by a corporation, Industry or an authority of State or Central Government can invoke the provisions contained in Sub-section (2) of Section 2(A) of the Industrial Disputes Act and straight-away file an application before the Labour Court inviting file an application before the Labour Court inviting adjudication of the dispute relating to his termination without seeking reference of the dispute by the Central Government under Section 10 of the Industrial Disputes Act. The petitioner was a Cotton Purchase Officer in the 1st respondent Co poration, was removed from service on 3-8-1987 as a result of disciplinary enquiry. On appeal, the order passed by the disciplinary authority was confirmed. Thereafter, he filed I.D. No. 73/88 in the Labour Court, Guntur U/s. 2-A(2) of the Industrial Disputes Act. On a preliminary objection raised by the management, the Labour Court, Guntur by its order dt. 13-4-89 came to the conclusion that in the absence of reference by the Central Govt. U/s. 10(1) read with Section 2-A of the Act, the petitioner cannot maintain the I.D. The Presiding Officer of the Labour Court held that the Cotton Corporation of India Limited is an 'industry' carried on under the authority of the Central Government as all the shares are owned by the Government of India and that the ultimate authority to Control the entire administration vests with the President of India. The Labour Court further held that in the absence of reference of the dispute by the Central Government, the Labour Court cannot entertain and adjudicate the dispute. Their lordships held :—
>
> > "They filed no warrant to restrict this scope and amplitude of the wide pharseology. Any workman employed in Sub-section (2) of Section 2-A of the Act so as to hamper the right of any workman who was discharged, dismissed, retrenched or terminated from employment or serivce. No congruity or anomaly would result by applying sub-section (2) to the cases of discharge, dismissal, termination or retrenchment of the workmen employed in an industry run by or under the authority of the Central Government. On the other hand, the purpose of the Act will be better served in placing an interpretation that it would apply to all categories of workmen. It is to be remembered that the State Government is as much concerned as the Central Government with the maintenance of industrial peace and welfare of the workmen. That is why the subject of labour and Industrial disputes is assigned to the concurrent list. Within the State, there need not be diversity of approach in the matter of providing remedies to the aggrieved workmen. There is no good reason why the ambit and operation of Section 2-A should be restricted only to the workmen other than those employed in an industry run by or under the authority of the Central Government. "

Their lordships held that the Industrial Dispute raised by the petitioner under Sub-section (2) of Section 2-A of the Industrial Disputes Act is maintainable.

14. In the present case also, the respondent company is a mine. The respondent has contested that the respondent is a mine and the appropriate Government under the Industrial Disputes Act is a Central Government.

As per the above decision, the subject of Labour and Industrial peace is assigned to the Concurrent List within the State. There is no doubt with regard to the relation of the petitioner and the respondent company is 'Employee Employer'. Hence, this court is having jurisdiction to entertain the petitio in the light of the above cited decision.

15. The second point agitated by the petitioner is that the dismissal order was served on him on 11-9-97 w.e.f. 22-3-96. He was not issued charge-sheet and a proper enquiry was not conducted against him.

16. The respondent has stated that the petitioner was unauthorisedly absent without applying leave and without informing his address to the respondent company.

In support of their version, the respondent filed Ex. M-1 dt. 6-2-97, office copy of the charge-sheet bearing No. SRP. 2/32CS/97/302. It was sent to the address left by the petitioner in the respondent company. The letter was returned, i.e., marked as Ex. M-2. The respondent had also taken steps by serving the enquiry notice bearing No. SRP. 2/32CS/97/291, i.e., marked as Ex. M-3. That was also returned. The registered cover is marked as Ex. M-4. The respondent has published the letter in 'Andhra Jyothi' Telugu Daily newspaper, which is marked as Ex. M-5. The enquiry proceedings dt. 1-4-97 is marked as Ex. M-6. The enquiry dt. 9-4-97 is marked as Ex. M-7. They also sent the enquiry report to the petitioner. But the cover was returned. They issued the show-cause notice while suppling the enquiry report dt. 22-4-97, i,e., marked as Ex. M-8. The returned cover dt. 3-5-97 is marked as Ex. M-9. They again published the matter in 'Andhra Jyothi' Telugu Daily newspaper on 25-6-97, i.e., marked as Ex. M-10. Office copy of dismissal order dated 11-9-97 is marked as Ex. M-11.

17. The proceedings were started from the date 6-2-97 and the respondent published the enquiry report in 'Andhra Jyothi' on 25-6-97. The entire matter had taken 4 months of the time in a year. The petitioner neither applied for leave nor informed the company about his Where abouts. In the absence of any message from the petitioner, the respondent company had taken the steps by publishing the matter in 'Andhra Jyothi' Telugu Daily newspaper twice, i.e., at the beginning of the enquiry and also after completion of the enquiry.

18. The defence raised by the petitioner is that he had taken treatment for sneezing. It was affected to him due to the coal dust and so that he is having the infection by working in the coal mine.

He filed Ex. W-4 dt. 13-6-94. Nosal Allergy due to coal dust certificate of Appollo Hospital, Hyderabad dt. 3-10-94 is marked as Ex. W-6. Reference to the Allergy clinic, Hyderabad is marked as Ex. W-5. He also filed Ex. W-7 recommendation to work in Pollution free zone. He filed Ex. W-8 dt 4-10-94 application of the petitioner with endorsement of the respondent. The respondent had referred him to SCCL Hospital dated 5-10-94, i.e., marked as Ex. W-9. The petitioner applied for surface work dt. 1-11-94 i.e., marked as Ex. W-10. Transfer application of the petitioner is Ex. W-11 dt. 12-11-94. All the documents Ex. W-4 to Ex. W-11 are the documents showing the da . in the year 1994. The petitioner was absent from duty from 22-3-96 to 6-2-97. The petitioner has to prove the reason for his absence during this period. The petitioner filed Ex. W-12 medical certificate of SCCL Hospital dt. 10-10-96. In that, it is only mentioned sneezing since one year. In the application, they did not refer the petitioner for treatment where the petitioner had underwent. Whether he is bed-ridden or he was referred to any other hospital, nothing was mentioned in Ex. W-12.

19. The petitioner was actually referred by the respondent company to the SCCL Hospital in the Year 1994, i.e., marked as Ex. W-9. But the petitioner went to the hospital on 10-10-96. In that, it is simply written sneezing since one year. It shows that the petitioner did not approach the hospital authorities immediately when he was referred by the company to the hospital Ex. W-13 is the medical certificate dt. 26-11-97. In that, medicines were prescribed by the Doctor. There is no whisper even after scanned the entire reports of the Doctor that the petitioner has to underwent any rest or he is unable to move.

20. The advocate for the petitioner while arguing that dismissal with retrospective effect is not legal cited Assaram Raibhah Dhage Vs. Executive Engineer and others LLJ (1) 1990—48. Their lordships held :—

> "Termination with retrospective effect is invalid and illegal whether employee is a permanent or temporary".

In this case, on June 7, 1980, the petitioner, a project displaced person was appointed as Mustering Attendant in the work charged establishment at a monthly salary of Rs. 200/-. Thereafter, he worked continuously without break in service till March 1986, when by a letter of termination dt. March 11, 1986 his services were retrospectively terminated w.e.f., March 1st, 1986.

An important fact in the above case is that the petitioner worked continuously without break in service whereas in the present case, the petitioner was absent from his duties for more than 10 months. The petitioner neither informed the company his address nor applied any leave.

21. The defence putforth by the petitioner that he suffered a problem due to coal dust which is the result of working in a coal mine. But he is conscious and to roam around the hospitals as per his version. Except Ex. W-12 and Ex. W-13 there are no relevant documents for the petitioner to prove the fact that he had roam around the hospitals for his disease which he has suffered.

22. The petitioner filed the office order promoting the petitioner as Coal filler w.e.f. 1-3-93 dt. 24/29-4-93. The confirmation order dt. 17-9-93 is marked as Ex. W-2. It shows that the petitioner had worked sufficient time in the mine and knows about the rules and regulations of the respondent company. The petitioner was not found for a long time. Hence, the respondent had taken all the steps to reach its orders to the petitioner by way of publishing the same in 'Andhra Jyothi' Telugu Daily newspaper.

23. The advocate for the petitioner also cited Union of India and others Vs. Dinanath Shantaram Karekar and others (1998) 7 Supreme Court cases 569. Their lordships held :—

> "Single attempt was not sufficient in this case. Further efforts should have been made for effecting the service. Show cause notice also published in

newspaper without attempting to effect its service through office peon or by registered post. Newspaper was not shown to be having vide circulation or sufficiently popular. Disciplinary enquiry was held vitiated for want of actual service of documents to the charge-sheeted employee. Legal position regarding service of documents in a disciplinary enquiry is different from communication of termination order."

Their lordships held :—

"Termination of service. Communication of order passed kept in file, but not communicated to terminated employee. Termination held does not become effective"

"The order is passed and merely kept in the file. It would not be treated to be an order terminating service nor shall the said order be deemed to have been communicated. The actual service is essential and as the person to whom the charge-sheet is issued is required to submit his reply and thereafter to participate in disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent. Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated".

In the light of the above, it is clear that the charge-sheet or the enquiry proceedings were not served on the petitioner.

In the result, it is clear that the charge-sheet or the enquiry proceedings were not served on the petitioner. The enquiry conducted by the respondent earlier is set-aside. The I. D., is closed with a direction to the respondent company to hold a fresh enquiry after following the procedure, within a period of 3 months from the date of publication of the award. There shall be no order as to costs.

Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the Open Court on this, the 16th day of October, 2003.

Smt. K. SUVARCHALA, Chairman-cum-Presiding Officer

Appendix of Evidence

Witnesses-examined

For workman :— For Management :—

—Nil— —Nil—

Exhibits

For workman :—

Ex. W-1	dt. 24/29-4-93	Office order promoting the petitioner as coal filler, xer. copy.
Ex. W-2	dt. 17-9-93 6-10-93	Confirmation order of coal filler, xer. copy.
Ex. W-3	dt. 11-9-97	Dismissal order, xer.copy.
Ex. W-4	dt. 13-6-94	Medical prescription of petitioner, xero. copy.
Ex. W-5	dt. —	Reference to Allergy Clinic. Hyderabad, xero. copy.
Ex. W-6	dt. 3-10-94	Certificate issued by Appollo Medical Centre, xer.copy.
Ex. W-7	dt. -do-	-do-
Ex. W-8	dt. 4-10-94	Application of petitioner endorsement of respondent, xero. copy.
Ex. M-9	dt. 5-10-94	Lr. issued to Medical Superintendent. Area Hospital. RKP by Colliery Manager, Sreerampur No. 2 Incline, x. copy.
Ex. M-10	dt. 1-11-94	Application of petitioner.
Ex. M-11	dt. 12-11-94	Transfer application of petitioner, xer. copy.
Ex. M-12	dt. 10-10-96	SCCL OP slip of petitioner.
Ex. M-13	dt. 26-11-92	Medical prescription of Hazira Bee, xero. copy

For Management :—

Ex.M-1	dt. 6-2-97	Charge-sheet.
Ex. M-2	dt, 10-2-97	Postal returned undelivered cover with ack.
Ex. M-3	dt. 22-2-97	Enquiry notice.
Ex. M-4	dt. 24-2-97	Postal returned undelivered cover with ack.
Ex. M-5	dt. 11-3-97	Andhra Jyothi Telugu daily news-paper charge-sheet-cum-enquiry notice published.
Ex-M-6	dt. 1-4--97	Enquiry statement of Sri K. Rajeshwar Rao, Sri S. Venkateshwarlu and Sri P. Prasad.
Ex. M-7	dt. 9-4-97	Enquiry report.
Ex. M-8	dt. 22-4-97	Lr. issued to petitioner by S.O.M., SRP-2 Incline.
Ex. M-9	dt. 24-4-97	Postal undelivered returned cover with ack.
Ex. M-10	dt. 25-6-97	Show-cause notice was published in Andhra Jyothi Telugu daily news paper.
Ex. M-11	dt. 11-9-97	Dismissal order, xerox copy.

नई दिल्ली, 17 नवम्बर, 2003

का.आ. 3397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.सी.सी.एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण हैदराबाद (संदर्भ संख्या एल सी आई डी 107/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-11-2003 को प्राप्त हुआ था।

[सं. एल-22025/2/2003-आई. आर. (सी. II)]

एन. पी. केशवन, डैस्क अधिकारी

New Delhi, the 17th November, 2003

S.O. 3397.—In Pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. LCID No. 107/2003) of the Central Government Industrial Tribunal cum Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workman, which was received by the Central Government on 14-11-2003.

[No. L-22025/2/2003-IR (C-II)]

N. P KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENTINDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD

Present
SHRI E. ISMAIL, B.Sc., LL.B.,
Presiding Officer

Dated the 3rd day of October, 2003

Industrial Dispute L.C.I.D. No. 107/2003

Between :

Sri Anaparthi Durgaiah,
S/o Sri Venkatai,
Ramakrishnapur,
MK 4 Incline,
Singareni Collieries Co. Ltd.,
Adilabad, Adilabad District. ... Petitioner

AND

1. The General Manager,
   The Singareni Collieries Co. Ltd.,
   Ramakrishnapur Area,
   Adilabad.
2. The Singareni Colliery Manager,
   Motilal Khani No. 4 Incline,
   Ramakrishnapur Area,
   Adilabad. : Respondents

Appearances :

For the Petitioner : Sri Vaddemani Srinivas, Advocate.

For the Respondent : M/s. K. Srinivasa Murthy & C. Vijaya Shekar Reddy, Advocates.

AWARD

This is a case taken under Sec. 2A(2) of the I.D. Act, 1947 in view of the judgment of the Hon'ble High Court of Andhra Pradesh reported in W.P. No. 8395 of 1989 dated 3-8-1995 between Sri U. Chinnappa and M/s. Cotton Corporation of India and two others.

2. The brief facts as mentioned in the petition are : That the Petitioner has joined long back as coal filler. That he was issued with a charge sheet on 13-4-2002 alleging that he was unauthorisedly absent from duty. An enquiry was conducted and he was dismissed from services on 9-12-2002. The punishment of dismissal is disproportionate to the charges levelled against him. Hence, he may be directed to be reinstated with all consequential benefits.

3. A counter was filed by the Respondent that the Respondent has issued a charge sheet dated 13-4-2002, that the Petitioner was unauthorisedly absent. The Petitioner submitted that due to illness he could not attend to his duties is false. That the number of musters he has put in are : in 1998—178 days, in 1999—166 days, in 2000—136 days, in 2001—47 days and in 2002 (Till October, 2002)—12 musters. A charge sheet dated 13-4-2002 was issued to him under company's standing order No. 25.25 for habitual absenteeism. As such an enquiry was ordered and the Petitioner fully participated in it. He was given full opportunity. He admitted in the domestic enquiry that he was habitually absenting from duty without any sanctioned leave during the year 2000-2001. The Petitioner did not produce any record to substantiate that he was absent due to ill-health. It is submitted that the Petitioner workman was counseled not to remain absent and he has agreed to put in minimum 20 musters per month during three months observation period that is from 21-5-2002 to 20-8-2002. But in fact he did not put in even a single muster during those three months. As such the Company was constrained to dismiss the Petition. It is not at all shockingly disproportionate. Hence, it does not required any leniency.

4. The Learned Counsel for the Petitioner conceded that the domestic enquiry is validly conducted and argued under Sec. 11-A of the Act. So submits that the Petitioner could not attend as he was sick and he has been working long back and he may be given one more chance by invoking provisions under Sec. 11-A as the Petitioner's dismissal is shock and disproportionate to the alleged misconduct.

5. The Learned Counsel for the Respondent submits that it is one thing if he was dismissed directly. In fact he was given three months chance to mend himself. He was given counseling and he agreed to put in minimum 20 musters every month beginning from 21-5-2002 to 20th August, 2002. In those three months has not even put a single muster. Hence, any sympathy shown to him would be misplaced sympathy and he prays that no relief may be granted to the Petitioner.

6. It may be seen that it is not as if he has been dismissed directly from the service. In fact he was given three months to mend himself from 21st May, 2002 to 20th August, 2002. He has not even put in one single muster although he agreed to put in minimum 20 musters in a month. He was dismissed on 9-12-2002. It is not clear from pleadings or from the counter as to when he was initially appointed. This goes to show that his previous record is also not a happy one. When we see that his muster rolls were deteriorating from 1998, in 1998 he has put in 178 musters, in 1999—166 musters and in 2000—136 musters. Hence, I am of the opinion that the ends of justice will be met if he is appointed as a temporary coal filler on the starting pay on or before 1st December, 2003 and if he puts in minimum musters for three consecutive years then his services may be made permanent otherwise he may be dismissed after conducting an enquiry. In the circumstances his past service shall not be considered for terminal benefits nor he is entitled for any back wages.

Award passed. Transmit.

Dictated to Ku. K. Phani Gowri, Personal Assistant transcribed by her corrected and pronounced by me on this the 3rd day of October, 2003.

E. ISMAIL, Presiding Officer

Appendix of evidence

Witness examined for the Petitioner	Witness examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Repondent

NIL

नई दिल्ली, 19 नवम्बर, 2003

का. आ. 3398.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 दिसम्बर, 2003 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी हैं) अध्याय-5 और 6 [धारा 76 की उप धारा (1) और धारा-77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध कर्नाटक राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला बंगलौर के तालुक बंगलौर पूर्व, होबली-बिदरहल्ली, ग्राम पंचायत-सीगेहल्ली के राजस्व ग्राम-कन्नामंगला के अन्तर्गत आने वाले क्षेत्र"।

[सं. एस.-38013/41/2003-एस. एस.-I]

के. सी. जैन, निदेशक

New Delhi, the 19th November, 2003

S. O. 3398.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st December, 2003 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapters V and VI [except Sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Karnataka namely :—

"Areas comprising the revenue villages of Kannamangala of Seegehalli Gram Panchayath, Hobili-Badarahalli, Taluk-Bangalore East, in the District of Bangalore."

[No. S-38013/41/2003-SS.-I]

K.C. JAIN, Director

आदेश

नई दिल्ली, 25 नवम्बर, 2003

का.आ. 3399.—जबकि केन्द्रीय सरकार की यह राय थी कि प्रमुख पत्तनों के प्रबंधन और उनके कर्मकारों के बीच एक औद्योगिक विवाद विद्यमान था;

और जबकि केन्द्रीय सरकार की यह राय थी कि इस विवाद में राष्ट्रीय महत्व का प्रश्न समाहित है और उक्त विवाद का न्यायनिर्णयन एक राष्ट्रीय औद्योगिक न्यायाधिकरण द्वारा किया जाना चाहिए;

और जबकि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 7ख द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार ने दिनांक 14-11-2000 के श्रम मत्रालय के आदेश संख्या एल 30011/15/2000-आई०आर० (वि०) के द्वारा एक राष्ट्रीय औद्योगिक न्यायाधिकरण का गठन किया था, जिसका मुख्यालय कोलकाता में था और केन्द्रीय सरकार औद्योगिक न्यायाधिकरण-सह-श्रम न्यायालय, कोलकाता के पीठासीन अधिकारी न्यायमूर्ति श्री बी.पी. शर्मा को इसके पीठासीन अधिकारी के रूप में नियुक्त किया था, और उक्त अधिनियम की धारा 10 की उपधारा (1-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उक्त औद्योगिक विवाद को न्यायनिर्णयन के लिए उक्त राष्ट्रीय औद्योगिक न्यायाधिकरण को संदर्भित किया था।

और जबकि न्यायमूर्ति श्री बी.पी. शर्मा ने 23-01-2003 के उपर्युक्त राष्ट्रीय औद्योगिक न्यायाधिकरण का कार्यभार छोड़ दिया था।

इसलिए, अब एक राष्ट्रीय औद्योगिक न्यायाधिकरण का पुनः गठन किया गया है जिसका मुख्यालय कोलकाता में है और जिसके पीठासीन अधिकारी के रूप में न्यायमूर्ति श्री हृषिकेष बनर्जी को नियुक्त

किया गया है तथा उपर्युक्त विवाद उक्त राष्ट्रीय औधोगिक न्यायाधिकरण के इस निदेश के साथ न्यायनिर्णयन हेतु भेज दिया गया है कि न्यायमूर्ति श्री हृषिकेष बनर्जी इस मामले में उस अवस्था से कार्रवाई करेंगे जहां पर न्यायमूर्ति श्री बी.पी. शर्मा ने इसे छोड़ा था और कानून के अनुसार इसका निपटान करेंगे।

[सं. एल- 31011/1/2000-आई आर (विविध)]

सी. गंगाधरन, अवर सचिव

ORDER

New Delhi, the 25th November, 2003

S.O. 3399.—Whereas the Central Government was of the opinion that an industrial dispute exists between the management of Major Ports and their workmen;

And, whereas, the Central Government was of the opinion that the above dispute involved a question of national importance and should be adjudicated by a National Industrial Tribunal;

And, whereas, the Central Government, in exercise of the powers conferred by Section 7B of the ID Act, 1947 (14 of 1947) constituted a National Industrial Tribunal vide Ministry of Labour Order No. L-30011/15/2000-IR (Misc.) dated 14-11-2000 with headquarters at Kolkata and appointed Justice B.P. Sharma, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kolkata as the Presiding Officer, and in exercise of the powers conferred by Sub-section (1-A) of Section 10 of the said Act, referred the said industrial dispute to the said National Industrial Tribunal for adjudication;

And whereas, Justice B.P. Sharma relinquished charge of the above said National Industrial Trinbunal on 23-01-2003;

Now, therefore, a National Industrial Tribunal is re-constituted with headquarters at Kolkata with Justice Shri Hrishikesh Banerji as its Presiding Officer and the above said dispute is referred to the said National Industrial Tribunal for adjudication with the direction that Justice Shri Hrishikesh Banerji shall proceed in the matter from the stage at which it was left by Justice B.P. Sharma and dispose of the same according to law.

[No. L-31011/1/2000-IR (Misc.)]

C. GANGADHARAN, Under Secy.

नई दिल्ली, 2 दिसम्बर, 2003

का.आ. 3400.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 जनवरी, 2004 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय-4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय-5 और 6 [धारा 76 की उप धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपबंध केरल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

"जिला तृश्शूर के तल्लापिल्ली तालुक में अलूर के अधीन आने वाले क्षेत्र"।

[सं. एस.-38013/42/2003-एस. एस. I]

के. सी. जैन, निदेशक

New Delhi, the 2nd December, 2003

S.O. 3400.—In exercise of the powers conferred by Sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st January, 2004 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except Sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Kerala namely :—

"Aloor in Thalappilly Taluk in Trichur District".

[No. S-38013/42/2003-SS.I]

K.C. JAIN, Director

Printed by the Manager, Govt. of India Press, Ring Road, Mayapuri, New Delhi-110064
and Published by the Controller of Publications, Delhi-110054